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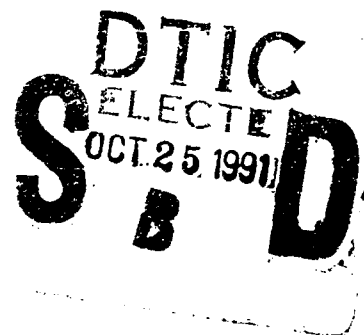
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NAVAL POSTGRADUATE SCHOOL Monterey, California



THESIS

A DICTIONARY OF ACQUISITION AND CONTRACTING TERMS

by

Michael W. Robinson

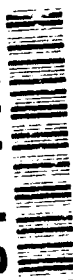
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Thesis Advisor:

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<p>This thesis is a continuation of research initiated by Lieutenant Commander Daniel F. Ryan, SC, USN to establish a basis for defining words and terms used in the field of contracting. Concurrent research in this area is being conducted by students at the Naval Postgraduate School, Monterey, CA and the Air Force Institute of Technology, Wright-Patterson Air Force Base, Dayton, OH. The twenty five terms selected were taken from a master list of contracting terms developed by previous researchers. A synthesized definition was developed for each term from various published sources. The synthesized definitions were then scrutinized by a select group of contracting professionals. Their comments were then used to develop a revised definition based upon consensus.</p>					
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A Dictionary of
Acquisition and Contracting Terms

by

Michael W. Robinson
Lieutenant, Supply Corps, United States Navy
B.S., Indiana University of Pennsylvania, 1979

Submitted in partial fulfillment
of the requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

from the

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ABSTRACT

This thesis is a continuation of research initiated by Lieutenant Commander Daniel F. Ryan, SC, USN to establish a basis for defining words and terms used in the field of contracting. Concurrent research in this area is being conducted by students at the Naval Postgraduate School, Monterey, CA and the Air Force Institute of Technology, Wright-Patterson Air Force Base, Dayton, OH. The twenty five terms selected were taken from a master list of contracting terms developed by previous researchers. A synthesized definition was developed for each term from various published sources. The synthesized definitions were then scrutinized by a selected group of contracting professionals. Their comments were then used to develop a revised definition based upon consensus.

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I. INTRODUCTION

A. BACKGROUND

This thesis is a continuing effort initiated by Lieutenant Commander Daniel F. Ryan, SC, USN in 1988, and subsequently expanded by students at the Naval Postgraduate School (NPS), Monterey, California, and the Air Force Institute of Technology (AFIT), Wright-Patterson Air Force Base, Dayton, Ohio. This research effort will continue to focus on synthesizing and standardizing definitions of terms used in the acquisition and contracting field. The research is sanctioned by the National Contract Management Association (NCMA), a professional association that will publish the consolidated research effort and make it available to the contracting community.

The consensus of previous researchers in this field is that there is a need to establish common language for the Federal Government acquisition and contracting environment. In his thesis, A Dictionary of Acquisition and Contracting Terms, Lieutenant Commander Ryan stated the following:

A basic requirement...of a discipline is the establishment and the recording of the meaning of the vocabulary used to conduct everyday business. The lack of such definitization in DOD and Federal Government contracting has lead to confusion at best. [Ref. 1: p. 7]

To communicate effectively, all participants in the procurement process must be interpreting the language in a

consistent manner. Until this ongoing research was established, no consolidated national effort had been undertaken in this regard.

Ryan and subsequent researchers recognized that various texts and schools have attempted to assemble elements of definitions, but the lack of consolidation in their efforts created a disparity in the definition of terms. The objective of this thesis is to research definitions and present the findings to professionals for clarification and validation with the ultimate goal of unifying acquisition and contracting language.

B. SCOPE AND ASSUMPTIONS

The scope of this thesis is to provide proposed definitions to twenty five terms used in the acquisition and contracting field. The terms were selected from a list that has been developed through previous research efforts by students at AFIT and NPS. The basic assumption of this thesis is that there is insufficient agreement on the specific meaning of terms as they apply to contracting. No one source of authoritative contracting definitions exists. As with the previous research efforts it was assumed that a consensus was the best method of arriving at an acceptable definition. Any other method would result in an arguably biased product. [Ref. 1: p. 7-8]

C. RESEARCH QUESTIONS AND BENEFITS

As a continuation of the previous research efforts, the same research questions will be used. The primary research question addressed in this thesis is: To what extent can standard meanings be arrived at in the evolving field of contracting in which words are used with various meanings?

[Ref. 1: p. 8]

The supporting subsidiary research questions are:

- What are the current published definitions?
- What agreement can be reached from professionals in the field?
- What definition of terms can be concluded from research and feedback?
- What is the present usage in current contract text?

[Ref. 2: p. 3]

The total benefit of this research effort is difficult to substantiate but three of the most recognizable ones are:

- It is moving closer to the ultimate goal of developing a comprehensive contracting dictionary.
- A completed comprehensive dictionary will be a valuable tool to help train new contracting personnel.
- A completed comprehensive dictionary will serve as a valuable reference tool for those in the acquisition and contracting field.

D. RESEARCH METHODOLOGY

As with the previous research the methodology employed was qualitative. It included a literature review, personal observations, a questionnaire, and the researcher's personal experience with the contracting discipline. [Ref. 3: p. 5-6]

The methodology employed was as follows:

1. Generate a list of twenty five candidate terms from previous research in this area. The consolidated list was provided by contracting personnel at AFIT.
2. Research the contracting literature and regulations for published definitions and common usage of the candidate terms.
3. Synthesize the published definitions into single working definitions and organize them into five separate questionnaires, each containing only five definitions. Unlike previous efforts the respondents will only be asked to comment on five definitions. This approach produced what is considered to be a more favorable response rate.
4. Mail out the questionnaires to five hundred Certified Professional Contracts Managers/Certified Associate Contracts Managers in five separate mailings of one hundred each.
5. Analyze questionnaire responses and arrive at proposed definitions for the candidate terms.

Prior to this research effort, seven other graduate students at NPS and AFIT had been compiling contracting definitions as part of this consolidated effort. As a result of these previous efforts, the master list of candidate terms identified in Step 1 was developed. Candidate terms identified in this list, and as of yet undefined, form the basis of this thesis. The 25 terms selected for analysis were:

- Amendment
- Arbitrary
- Assignment
- Bailment
- Bidders Conference
- Boilerplate
- Conflict of Interest
- Consideration
- Contract Modification
- Default
- Delinquency
- Economic Order Quantity (EOQ)
- Escalation
- Ethics
- FIFO Cost Method
- Flowdown of Contract Requirements
- General Provisions
- Implied Contract

- Inventory
- Letter Contract
- Multiyear Contract
- Patent
- Procurement Package
- Requirement
- Unsolicited Proposal

The literature review conducted to identify currently published definitions was done in the same manner as the previous efforts. Once the terms were synthesized, they were included in a questionnaire to solicit input from contracting professionals. The survey method employed in this thesis differed slightly from previous efforts and produced a greater response rate.

In his thesis, Ryan explained the rationale for using a written questionnaire sent to a representative sample of contracting professionals. The researcher concurs with Ryan's contention that large scale telephone surveys would be impractical. [Ref. 1: p. 14]

Rather than send out a questionnaire with the entire 25 terms to each individual, five separate questionnaires labeled A through E with five terms each were distributed. It was hoped that by reducing the time required to complete the questionnaire, the response rate would be improved. This methodology proved quite successful as evidenced by an aggregate response rate of 54% that was achieved from the five

hundred questionnaires (5 questionnaires at 100 each) distributed. Individual questionnaire response rates of 57%, 51%, 62%, 51%, and 49% were achieved. The list of potential respondents was also increased over the previous studies because the mailing list was developed from a master list of CPCM/CACM personnel rather than just NCMA Fellows.

E. ORGANIZATION OF THE STUDY

Chapter I provided an introduction to the thesis. It described the need for a comprehensive dictionary of acquisition and contracting terms and highlighted the previous research done in this area. It identified the terms to be included in the research and also described the methodology employed. Chapters II and III report the research findings developed from analyzing the questionnaires. Chapter II discusses those terms that generated considerable comment and were deemed controversial. Chapter III contains the analysis of the remaining terms. Chapter IV contains conclusions, recommendations, answers to the research questions, and suggests areas for further research.

II. ANALYSIS OF "CONTROVERSIAL" TERMS

A. INTRODUCTION

This chapter is the first of two chapters that address the results of the questionnaire. They follow the format used by the previous researchers that was established by Ryan. This chapter discusses the analysis of the terms that generated the most comment and were deemed controversial. Chapter III contains an analysis of the remaining terms.

Identifying a term as controversial was not simply a matter of selecting those terms that generated the most comments. Two general guidelines were used to place a term in the controversial category. If a term generated considerable comment that was varied and divergent, it indicated that there was a fundamental difference as to its everyday application. The second criterion used to indicate a controversial term was when a consensus developed among the respondents that strongly disagreed with a provision of the synthesized definition, indicating a significant divergence from the published definition.

Both of the analysis chapters follow the same format. Section "a" discusses the definition synthesis process. Section "b" examines the results of the questionnaire, and includes selected comments from the respondents. In some cases the comments chosen were used to revise the definition

while others were included because they provided relevant information about the term without having particular application in a revised definition. Section "c" offers a proposed revised definition, including synonyms and antonyms where applicable. The revised definitions are the recommended additions to the previous research efforts to develop a dictionary of acquisition and contracting terms based upon consensus.

In arriving at the final proposed definition the method employed by Ryan was used:

Certain recommendations from the respondents were incorporated into the definition even though the majority of the respondents supported the synthesized definition as it was proposed in the questionnaire. The recommendations were used only if they did not change the main thrust of the synthesized definitions. The consensus achieved through the use of the questionnaire process was not compromised. [Ref. 1: p. 18]

B. TERM ANALYSIS

1. Contract Modification

a. Definition synthesis:

The definition was not difficult to synthesize because there were thirteen different references from which to draw upon, all of which defined the term in essentially the same way. The definition as synthesized was:

CONTRACT MODIFICATION: Any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity or other contract provisions of an existing contract, whether accomplished by unilateral action (change order) in accordance with a contract provision or by mutual action (supplemental agreement) of the parties to a contract. Compare this with an "amendment" which is usually used to modify a solicitation.
Synonyms: None.
Antonyms: None.

b. Results:

The questionnaire generated numerous comments. This was quite surprising considering the unanimity of the published definitions. Thirty one of the fifty one respondents agreed with the definition as written. Another four concurred and offered some minor comments, but sixteen respondents disagreed with the definition as presented and offered considerable comment. They included:

- Modify the definition to read, "Any written alteration of the contract...." The listing of examples is ponderous and unnecessary.
- A number of the elements in the definition as proposed are outside the scope of the changes clause and could be considered a constructive change.
- Modify to read, "Any written alteration to an existing contract...." Delete last sentence.
- Definition works for both modification and amendment. There is no difference.
- Constructive changes have not been covered. Agree with definition as written otherwise.

- Modify to read "Any authorized written alteration to the specification..." Changes by unauthorized persons may not be binding and therefore not contract modifications.

Even though thirty one of the respondents concurred with the definition without comment, the fact that the twenty who did comment offered such a variety of suggestions indicates that there is significant disparity about what a "contract modification" is at the grass roots level. Most of the comments tended to narrowly focus on a specific area that needed amplification without pointing out significant deficiencies in the synthesized definition. Therefore, the revised definition remains broad based with only minor changes to enhance clarity.

c. Proposed definition based upon responses:

CONTRACT MODIFICATION

Any authorized written alteration in the provisions of an existing contract, whether accomplished by unilateral action (change order) in accordance with a contract provision or by mutual action (supplemental agreement) of the parties to a contract. Compare this with an "amendment" which is usually used to alter a solicitation.

- **Synonyms:** Change order, supplemental agreement.
- **Antonyms:** Constructive change.

2. Delinquency

a. Definition synthesis:

The term "delinquency" was difficult to synthesize into a definition to present in the questionnaire because the researched definitions did not offer much of a consensus. With the exception of one definition they did not address the

term within an acquisition and contracting setting. The definition as synthesized was:

DELINQUENCY: (1) Failure, omission, violation of law or duty.

(2) State or condition of one who has failed to perform his duty or obligation.

(3) Includes, for example, actual failure by the contractor--that is his failure, regardless of reason to meet the contract delivery or performance schedule; and potential failure by the contractor--that is, his failure, regardless of reason, to maintain such progress in contract performance as is required to meet his contract delivery or performance schedule.

Synonyms: None.

Antonyms: None.

b. Results:

As expected the term generated considerable comment. Twenty three of the sixty two respondents agreed with the definition as written. Sixteen respondents concurred with the definition as written, but offered minor comments on revision and suggested synonyms and antonyms. Twenty three respondents did not concur and offered more extensive commentary and revisions. Selected responses included:

- Definition (1) does not apply to contracting and sounds more like "negligence."
- Definition (3) should also address issues of quality and quantity of performance standards.
- Delinquency is redeemable failure.
- Include the following in definition (3). A contract delinquency results from a failure to comply with the contract requirements. Thus a contractor is not

delinquent, i.e., has not failed to satisfy contract requirements if he has an excusable delay.

- Revise definition (1) to read, "A contractually unexcusable failure...." Delete "regardless of reason" in definition (3) and revise line 6 to read, "...performance schedule unless such performance or potential performance is rendered impossible by an act of God, the law or intervention of other parties."
- The definition of delinquency does not cover "best efforts" contracts. NASA has a "notice of delay" clause when technical difficulties are encountered which essentially negates delinquency.
- Delinquent may only mean late but still capable of performing. Default may mean late and not capable of performing.
- Revise (3) to read, "...to meet any contract requirement such as performance schedule, contract delivery or scheduled reports and reviews." Potential delivery is subjective. A contractor may only be delinquent only if he misses contract milestones.

Opinions as to the scope of "delinquency" varied widely. No respondents disputed the fact that one was "delinquent" when failing to deliver on time, given that there were no extenuating circumstances. This caused the phrase "regardless of reason" to be deleted from the revised definition. Beyond that point there was no consensus among

the dissenters. Several respondents saw "potential failure" as beyond the scope of "delinquency" while others wanted to include additional contractual aspects like quality and quantity of performance standards. The revised definition should function as a baseline from which additional research on this term could be conducted.

c. Proposed definition based upon responses:

DELINQUENCY

(1) Failure, omission, or violation of contractual obligation or duty.

(2) The actual failure by the contractor to meet the contract delivery or performance schedule, or the potential failure to do so by failing to maintain required progress in contract performance as required by the contract delivery or performance schedule.

- **Synonyms:** Overdue, tardy, late.
- **Antonyms:** Early, accelerated, timely.

3. Escalation

a. Definition synthesis:

The term was not difficult to synthesize, but the researched definitions did fall into two distinct categories. The first category of definitions conveyed the meaning in a generic sense while the second group was directed at "escalation" within the context of a contract provision. The synthesized definition was:

ESCALATION: (1) A term traditionally used to indicate an upward or downward movement of price. "Economic price adjustment" is the contemporary term used to express the sense of escalation.

(2) In Government contracting refers to an amount or percent by which a contract price may be adjusted if contingencies occur, such as changes in the vendor's raw materials costs or labor costs.

Synonyms: Economic Price Adjustment.

Antonyms: None.

b. Results:

The synthesized definition generated considerable comment. Twenty three of the sixty two respondents agreed with the definition as written. Fifteen concurred with the definition and offered comments and another twenty four did not concur with the synthesized definition. The majority of the comments challenged "escalation" as a downward movement in price. Some of the comments included:

- Escalation is only upward movement of price. Delete "or downward" from definition (1).
- Schedules may also be escalated.
- Contingencies must be specified in the contract.
- Escalation is misleading because it means "up" not down. Economic Price Adjustment is the proper term to be defined.
- In proposals, usually refers to annual merit increase factors for labor.

Twenty one of the respondents flatly disagreed that an "escalation" could be a downward movement in price. The everyday use of this term is in direct conflict with several of the researched definitions. Several of the

respondents stated that "Economic Price Adjustment" more accurately conveyed an upward or downward movement in price. In a practical sense price increases are a much more frequent occurrence than price decreases and this point is addressed in the revised definition. Other recurring comments suggested that price indices and labor factors are key aspects of "escalation." They too are reflected in the revised definitions as amplifying information.

c. Proposed definition based upon responses:

ESCALATION

(1) A term traditionally used to indicate an upward or (more rarely) a downward movement of price. "Economic Price Adjustment" is the contemporary term used to express the application of escalation by specified procedures.

(2) In Government contracting refers to an amount or percent by which a contract price may be adjusted if pre-defined contingencies occur, such as changes in the vendor's raw material costs or labor costs. The amount of the "escalation" is usually tied to some predetermined price index.

- **Synonyms:** Economic Price Adjustment.
- **Antonyms:** None.

C. SUMMARY

This chapter is the first of two chapters that detailed the research, data collection, and analysis process used to develop the baseline working definitions central to this thesis. This chapter analyzed the three terms that were deemed controversial based upon the survey responses.

Synthesized definitions were developed from the published definitions detailed in Appendix A. They were then incorporated into the questionnaire (Appendix B) and

distributed. A summary of all the proposed baseline definitions, synonyms and antonyms can be seen in Appendix C. The next chapter follows a similar process as it discusses the remainder of terms in this research effort.

III. ANALYSIS OF "NON-CONTROVERSIAL" TERMS

A. INTRODUCTION

This chapter follows the same format utilized in Chapter II as it addresses the remaining terms of this research effort. The terms in this chapter generated a stronger consensus among the respondents. Modifications to the original synthesized definitions were relatively minor. The revisions are intended to enhance clarity by reducing jargon and in some instances by adding amplifying information that was not part of the original definition. The changes and refinements to the synthesized definitions did not alter the consensus because the basic meanings of the synthesized definitions were not changed.

B. TERM ANALYSIS

1. Amendment

a. Definition Synthesis:

The term "amendment" was not difficult to synthesize. Although they varied as to specificity, the collected definitions in Appendix A all defined "amendment" as an alteration to an existing document. The decision was made to define it specifically in terms of its application to Government contracting. The definition as synthesized was:

AMENDMENT: A revision or change to improve or correct a document; often used to correct an Invitation For Bid (IFB). An amendment is distinguished from "modification"

which is generally used in procurement to change an existing contract.

Synonyms: None.

Antonyms: None.

b. Results:

Twenty two of the fifty seven respondents concurred with the definition as it was synthesized. Twelve concurred with minor comment. Twenty three respondents did not concur with the definition. Some of the comments included:

- Replace "an Invitation For Bid (IFB)" with "a solicitation." An IFB is only one type of solicitation and amendments apply to all types of solicitations.
- Amendments are also used to correct, clarify, or add to a Request For Proposal (RFP).
- Amendment is a device to extend, modify the meaning of the original document. Modification is a descriptive term to signify a change to an original requirement, specification, document, contract, delivery schedule, and the like.
- The distinction between "amendment" and "modification" is an artificial invention of the Government and is invalid in other contracts. Amendment=modification=change.

Comments from twenty five of the respondents pointed out that the questionnaire definition should have included a Request For Proposal (RFP) along with an Invitation For Bid (IFB) as one of the solicitation documents that could be amended. The omission of RFP from the definition was

strictly an oversight. It was also repeatedly pointed out that the term "amendment" has a very specific definition in the context of Government contracting, but that it also has validity in a more generic sense in commercial contracting. Neither of these two points were brought out in the researched definitions used to synthesize the definition for the questionnaire. In accommodating these major points, the revised definition addresses the commercial verses Government contracting issue by creating separate parts of the definition and the more generic term "solicitation" replaces "Invitation For Bid."

c. Proposed definition based upon responses:

AMENDMENT

- (1) A revision or change to correct, clarify, or add to an existing document.
- (2) In Government contracting it is an instrument used to correct, clarify, or add to a solicitation document. Contrast this with a "modification" which is used to change an existing contract.

- **Synonyms:** Revision, alteration, correction.
- **Antonyms:** None

2. Arbitrary

a. Definition synthesis:

The term "arbitrary" was a difficult term to synthesize into a working definition because all the researched terms were couched within a legal framework. It was easy, however, in the sense these definitions were in general agreement. The definition as synthesized was:

ARBITRARY: (1) Depending on individual discretion or not fixed by law.

(2) Coming about seemingly by chance or as a capricious and unreasonable act of will.

(3) A determination made willfully by whim without adequate regard for the facts or circumstances. Often used as in an "arbitrary and capricious manner."

Synonyms: None.

Antonyms: None.

b. Results:

Forty one of the fifty seven respondents concurred with the definition as they were synthesized. Six concurred with minor comment. Ten respondents did not concur with the definition. Some of the comments included:

- Five respondents suggested that (1) and (2) be deleted entirely.
- Add "or regulation" to "law" in (1).
- Arbitrary is not always bad or unreasonable.
- Consolidate all definitions into one to read, "An act, decision, or determination which was reached or made without apparent regard for published guidelines which would be expected to apply to the situation, and possibly without consultation."

The overwhelming concurrence rate coupled with the general agreement in the researched definitions indicated that only minor revisions were necessary to the synthesized definition. The three separate parts of the definition were maintained rather than combined into one because they tended to reinforce one another while giving the reader a slightly different perspective on the term "arbitrary."

c. Proposed definition based upon responses:

ARBITRARY

(1) Depending on individual discretion, not fixed by law or regulation.

(2) Coming about seemingly by chance or as a capricious and unreasonable act of will.

(3) A determination made willfully by whim without adequate regard for the facts or circumstances. Often used as in an "arbitrary and capricious manner."

- **Synonyms:** Subjective, autocratic, despotic, unilateral.

- **Antonyms:** Objective, bilateral.

3. Assignment

a. Definition synthesis:

The term "assignment" was not difficult to synthesize because all the researched definitions were in general agreement. However, most were related to property and property rights with little emphasis on other aspects of "assignment" such as claims or obligations as was pointed out in questionnaire responses. The definition as synthesized was:

ASSIGNMENT: The legal transfer, to another party, of some property right (as in the case of intangible property) or the actual transfer of title and/or possession (as in the case of tangible property).

Synonyms: None.

Antonyms: None.

b. Results:

Forty two of the fifty seven respondents supported the definition as synthesized. Six concurred with the definition and suggested minor revisions that were mostly editorial in nature. Nine of the respondents did not concur

with the synthesized definition. Some of the comments included:

- Not real clear, should be simplified.
- Too complex, simplify to read, "The legal transfer of some property right to another party."
- Doesn't account for transfer of rights and duties which apply to the procurement environment. Revise to, "A transfer or change of rights and duties of the parties to a contract."
- Doesn't have to be related to property, e.g., assignment of a contract or a claim.
- Don't use examples with the definition. More often than not it hinders the reader.

The large concurrence rate indicated that only a minor revision was required to the synthesized definition. The suggestion to eliminate examples because they tended to hinder understanding was not accepted. Ryan noted similar comments in his research effort and discounted them as well by noting that "published American language dictionaries include amplifying comments...as a matter of course." [Ref. 1: p. 21] The revised definition includes two separate parts. The first addresses the property issue in simplified terms and retains the examples. The second clarifies the application of "assignment" in areas other than property related.

c. Proposed definition based upon responses:

ASSIGNMENT

(1) The legal transfer, to another party, of some intangible property right or the actual transfer of title and/or possession of tangible property.

(2) The legal transfer of a claim, right, or obligation from one party to another.

• **Synonyms:** None.

• **Antonyms:** None.

4. Bailment

a. Definition synthesis:

The term "bailment" was not difficult to synthesize. All the researched definitions were in general agreement as to usage. There was an even split in the definitions between a general application of the term and a specific application to Government contracting. The definition as synthesized was:

BAILMENT: A delivery of Government property to a contractor for a specific purpose directly related to a contract. The material is to be returned to the Government or accounted for when the special purpose is accomplished. Bailment does not include: (a) sale, (b) donation, (c) lease, (d) the furnishing of property to a contractor under a facilities contract or (e) the furnishing of Government furnished property for consumption or in such a way that it would lose its identity when incorporated into an end product.

Synonyms: None.

Antonyms: None.

b. Results:

Thirty six of the fifty seven respondents agreed with the definition as synthesized without comment. Twelve respondents concurred, but supplied considerably detailed comments along with nine respondents who did not concur with

the definition as written. The most significant comments follow:

- Not necessarily limited to Government property. Bailments apply to contractor's property as well.
- Expand definition beyond the Government. Revised definition is "A contract for delivery of goods or personal property, from one party to another, in reliance upon the use of the goods/property for a specified purpose, with a subsequent obligation to return the goods or property to the party who delivered the goods or property."
- Does not have to be delivered. The property may be in place at the time of bailment.
- Does not have to be related to a contract in any way.
- Bailment can occur if the contractor promises something in return such as drawings in a reverse engineering effort. In this instance destruction might occur during evaluation or testing and that is acceptable in consideration of the return value gained by the Government--a specification package.

Several of the comments pointed out that the concept of "bailment" was not limited to Government contracting and had application in commercial contracting as well. While normally associated with a particular contract, two respondents pointed out that a bailment agreement can exist where no formal contract is in place. They both cited

examples of bailing components to contractors for reverse engineering efforts. There were also some mixed comments where some respondents recommended that the definition be expanded to include more examples while others felt that the additional clarification in the definition as presented was unnecessary.

c. Proposed definition based upon responses:

BAILMENT

A delivery of property from the owner to another party to be used in accomplishing a specific purpose. The property is to be returned to the owner or properly accounted for when the specific purpose is accomplished. Bailment does not include the sale, donation, lease, furnishing of property to a contractor under a facilities contract, or the furnishing of Government Furnished Property (GFP) where it would be consumed or otherwise lose its identity in the production process.

- **Synonyms:** None.
- **Antonyms:** None.

5. Bidders Conference

a. Definition synthesis:

The term "bidders conference" was difficult to synthesize because the researched definitions, while in general agreement, failed to fully encompass the researcher's perceptions about the actual daily use of the term in the acquisition and contracting field. These perceptions are based on personal experience and discussions with other contract professionals. Specifically, in Government contracting there is a distinct difference between a bid and a proposal. The former being a sealed response to an Invitation For Bid, and the latter being a response to a

Request For Proposal. While these two procurement methods are separate and distinct it is the researchers analysis that the term "bidders conference" has been used to generically refer to the conference that is held after the release of the solicitation, but prior to contract award, regardless of the type of solicitation document used. The definition as synthesized was:

BIDDERS CONFERENCE: A colloquial expression that describes a method of disseminating information to all potential respondents to a solicitation, be it an Invitation for Bid (IFB) or a Request for Proposal (RFP). The contracting officer arranges the conference during the solicitation period to help the respondents fully understand the Government requirements and to give them an opportunity to ask questions about the solicitation.
Synonyms: Pre-Bid Conference, Pre-Proposal Conference.
Antonyms: None.

b. Results:

Thirty nine of the fifty seven respondents concurred with the definition as synthesized. Eight concurred and added minor comments. Ten did not concur with the definition as written and supplied some rather extensive comments. For example:

- Delete the term "colloquial" from the definition.
- Agree with definition but synonyms are wrong. Pre-Bid/Pre-Proposal Conferences differ from a Bidders Conference in that they occur as they are titled, prior to the release of a RFP or IFB. Pre-Bid and Pre-Proposal conferences are utilized to get industry comment prior to release of any formal documents. They can be utilized

with Draft RFPs and Draft IFBs when you need technical assistance from industry.

- Delete "Government" from "Government requirements." There is more contracting than that done directly with the Government.
- Change "respondents" to "potential respondents."
- Change term to "Pre-Award Conference."
- Must distinguish between "bid" and "proposal" and not mix them.

The overwhelming concurrence rate appears to indicate that the generic use of the term "bidders conference" is well established in the contracting vernacular. The dissenters among the respondents quite accurately pointed out that there is a distinct difference between a "bid" and a "proposal" and one went on to suggest that the term "Pre-Award Conference" would more accurately fit the definition. While that is probably true the intent of this research effort was not to create new terms, but to develop working definitions for those terms already in common use in the acquisition and contracting environment. Finally, the statement that the Pre-Bid/Pre-Proposal Conferences were held prior to the release of the solicitation is inaccurate. They are held after the release of the solicitation. [Ref. 10:p. 14.207]

c. Proposed definition based upon responses:

BIDDERS CONFERENCE

A generic expression that describes a method of disseminating information to all potential respondents to a solicitation, be it an Invitation for Bid (IFB) or a Request for Proposal (RFP). The contracting officer arranges the conference during the solicitation period to help the potential respondents fully understand the buyer's requirements and to give them an opportunity to ask questions about the solicitation.

- **Synonyms:** Pre-Bid Conference, Pre-Proposal Conference.
- **Antonyms:** None.

6. Boilerplate

a. Definition synthesis:

This term was not difficult to synthesize. All the researched definitions were in general agreement as to the practical usage of the term and they agreed with the researcher's understanding of the term's application. The definition as synthesized was:

BOILERPLATE: (1) A standardized prearranged format. Applies to anything which is not subject to frequent changes. (2) Used most often in Government contracting to describe the general provisions or standard clauses incorporated into the solicitation and/or contract. It is usually pre-printed and often incorporated by reference.
Synonyms: General Provisions.
Antonyms: None.

b. Results:

Thirty one of the fifty one respondents agreed with the definitions as they were written. Another nine respondents concurred and offered minor comments, most of which were related to suggested synonyms and antonyms. Eleven respondents did not concur and offered some extensive

comments. Some of their observations concerning this term included:

- Add mention of items/clauses required by statute, executive order, or agency/command policy.
- Revised definition is "Language which is used commonly in documents having a definite meaning in the same context without variation; used to describe standard language in a legal document that is identical in instruments of a like nature.
- The terms "general provisions" and "standard clauses" are obsolete terminology. They were replaced by "contract clauses" and "special contract requirements," respectively.
- It (the term "Boilerplate") is not synonymous with general provisions. General provisions are the clauses required by law or option that relate to a particular procurement.

Some of the respondents raised some very valid points, but incorporating them into a revised definition did not appear to contribute to better understanding of the term. Some "boilerplate" is mandated by law or regulation and even more is incorporated at the activity level. While the terms "general provisions" and "standard clauses" may be obsolete terminology in Government contracting in an official sense, they still appear to have valid use in commercial and Government contracting as evidenced by the overwhelming

concurrence rate. The revised definition is only slightly modified to improve clarity.

c. Proposed definition based upon responses:

BOILERPLATE

(1) A standardized prearranged format. Applies to language which is not subject to frequent change.

(2) Used most often in Government contracting to describe the general provisions or standard clauses incorporated into the solicitation and/or contract. It is usually pre-printed and often incorporated by reference.

- **Synonyms:** General provisions, standard provisions and clauses.
- **Antonyms:** Special provisions, special contract requirements.

7. Conflict Of Interest

a. Definition synthesis:

The difficulty in synthesizing this term was in deciding how broad a scope of "conflict of interest" to address. It was decided to break the term down into two separate terms: Personal Conflict of Interest and Organizational Conflict of Interest. Personal Conflict of Interest was more widely addressed in the literature and the researched definitions were in general agreement as to its meaning, even though some of the definitions were very detailed while others were quite brief. Organizational Conflict of Interest was more difficult to synthesize because only one definition could be found. The definitions as synthesized were:

CONFLICT OF INTEREST:

Personal Conflict of Interest: (1) A conflict between the private interests and the official responsibilities of a person in a position of trust (as a Government or corporate official).

(2) The actual or potential conflict in which a Government employee (or his immediate family) may gain from (or hold interest in) a company doing business with the Government.

Organizational Conflict of Interest: This situation exists when the nature of work to be performed under a proposed (Government) contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contracted work.

Synonyms: None.

Antonyms: None.

b. Results:

Thirty six of the fifty one respondents concurred with the definitions as written. Five concurred with minor comments. Ten did not concur with the original definition and offered more extensive comments. A representative sample of the comments includes:

- Emphasize that a conflict of interest can occur when there is an "actual or potential conflict" in both personal and organizational settings.
- Emphasize that the conflict is related to financial gain.
- A Government employee who was recently separated could be involved in a personal conflict.
- Don't restrict definitions to Government employees only.
- Revise organizational conflict definition to read, "This situation exists when the contractor who developed the specifications for a product or service is allowed to

compete for supply of that product or service to the Government."

Three of the comments related to emphasizing "conflict of interest" as necessarily imputing a financial gain to the affected party. This is probably true in the majority of cases, but was considered too restrictive to be a good working definition. Another respondent suggested revising "organizational conflict of interest" and limit it to a contractor subsequently competing for Government business on a specification that they developed. This may again be the most frequent occurrence for such a conflict but it was considered overly restrictive. The revised definition emphasizes "potential conflict" and recognizes that conflicts involving governmental relationships present special problems.

c. Proposed definitions based upon responses:

CONFLICT OF INTEREST

Personal Conflict of Interest: (1) An actual or potential conflict between the private interests and the official responsibilities of a person in a position of trust (as a Government or corporate official).

(2) The actual or potential conflict in which a Government employee (or immediate family) may gain from (or hold interest in) a company doing business with the Government.

Organizational Conflict of Interest: This situation exists when the nature of work to be performed under a proposed (Government) contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contracted work.

- **Synonyms:** None.
- **Antonyms:** None.

8. Consideration

a. Definition synthesis:

This term was not difficult to synthesize because the published definitions were essentially the same. Minor variances occurred in the level of detail the definitions addressed. The definition as synthesized was:

CONSIDERATION: (1) Something of value given for a promise to make that promise binding.

(2) The inducement to a contract. The reason a contracting party enters into a contract. Often used as a recompense when an existing contract is changed.

Synonyms: None.

Antonyms: None.

b. Results:

This term generated considerable comment, but most could be categorized as amplifying comments. There was no consistent pattern that pointed out any major deficiencies in the definitions as presented. Twenty five of the fifty one respondents concurred with the definitions as written. Another seven concurred as well, but offered some minor comments. Nineteen disagreed with the definition. Some of the more significant comments included:

- Consideration is whatever is given in exchange for something else. May be a promise or act, etc. May not have monetary value, i.e., time.
- Concur with (1) and (2). Also add (3) to read "In a contractual relationship, something of value given to the second party when the first party does not fully meet its contractual obligation."

- Often only one party desires a change and the other must concentrate to find suitable consideration; therefore, it is not the reason for a party to enter into a contract necessarily.
- Need to add emphasis that in a modification consideration must be obtained whenever the Government (or either party) gives up a right that they had under the basic contract. This point is frequently overlooked by inexperienced contract specialists.
- Add to (2), "Consideration is not to be confounded with motive. Consideration means something of value in the eyes of the law."
- Performance is the key to contract consideration. Revised definition is "Something of value given in return for performance or promise of performance for the purpose of forming and binding a contract."

While the comments above raise some very valid points they are seen primarily as amplifying comments to the synthesized definition. It would be impractical to attempt to incorporate them into a working definition. There were, however, some minor recurring comments that were incorporated into the revised definition. A third part to the definition was added that more clearly conveyed an essential element of the term.

c. Proposed definition based upon responses:

CONSIDERATION

- (1) Something of value given in exchange for a promise to make that promise binding.
- (2) The inducement to a contract. Often the reason a contracting party enters into a contract.
- (3) In a contractual relationship, something of value given to the second party when the first party does not fully meet its contractual obligation.

- **Synonyms:** Compensation, earned benefit.
- **Antonyms:** None.

9. Default

a. Definition synthesis:

This term was not difficult to synthesize. While some of the researched definitions got into greater detail than others they were in general agreement. The definition as synthesized was:

- DEFAULT:** (1) Failure to do something required by law.
(2) To fail to fulfill a contract, agreement, or duty.
(3) In Government contracting most often refers to the contractor's failure to make adequate progress, failure to deliver on time, or failure to fulfill a material provision of the contract. In these circumstances the Government accrues the right to terminate.

Synonyms: None.

Antonyms: None.

b. Results:

Twenty of the fifty one respondents concurred with the definition as written. Eleven of the respondents concurred with the synthesized definition, but offered minor comments that amounted to word revisions and suggesting synonyms and antonyms. An additional twenty respondents did not concur with the definition and offered more extensive comments. Some of the comments included:

- Revise definition (2) to read, "Failure to satisfy the terms and conditions of a contract."
- Delete sentence 2 from definition (3). This is a remedy for default not a definition.
- Default is the failure of the contractor to perform to the contract requirements, make progress so as not to endanger performance and perform any other contract provision. If the contract requires the contractor to comply with all laws then (1) would apply.
- Comments on definition (3). Government is at fault as often as the contractor. The Government often forces the small business to "go along" because small business has no leverage to stand up for its rights.
- Need better definition between termination for convenience and termination for default conditions and requirements for use.
- Government doesn't accrue the right to terminate. It always has the right if certain things happen or don't happen.

There was substantial agreement that definition (1) failed to even minimally define "default." Therefore, it was deleted from the proposed revision. The point was raised again about amplifying comments not being necessary in the definitions. As previously stated it is common practice in American language dictionaries to offer amplifying commentary to enhance understanding. Therefore, the suggestion was not

followed. The majority of the comments provided suggestions on improving the clarity of the definitions and indicated that there is widespread consensus on the use of the term "default" in the acquisition and contracting community.

c. Proposed definition based upon responses:

DEFAULT

(1) Failure to satisfy the terms and conditions of a contract, agreement, or duty.

(2) In Government contracting most often refers to the contractor's failure to make required progress, failure to deliver or perform on time, or failure to fulfill a material provision of the contract. In these circumstances the Government may exercise its right to terminate for default.

- **Synonyms:** Breach, non-compliance, non-conformance.
- **Antonyms:** Compliance, conformance.

10. Economic Order Quantity (EOQ)

a. Definition synthesis:

This term was not difficult to synthesize. There were numerous researched definitions upon which to draw, all reflecting essentially the same meaning. The definition as synthesized was:

ECONOMIC ORDER QUANTITY (EOQ): The most economical quantity of parts to order at one time to support a defined production or consumption rate considering the applicable procurement and inventory costs.

Synonyms: None.

Antonyms: None.

b. Results:

Thirty seven of the sixty two respondents agreed with the term as presented and offered no comment while another nine also concurred, but offered minor revision suggestions. Sixteen of the respondents did not concur with

the synthesized definition and offered more extensive varied comments. A sample of the comments included:

- Revise definition to read, "...quantity of items..." vice "...quantity of parts..."
- From the manufacturers point of view not the buyers.
- Clarify that the cost of money invested in the inventory is included in inventory costs.
- It's not only for parts and it isn't only applicable to "orders." EOQ can be a pricing principle used to establish the quantity to buy each year of a multi-year contract for usable end items like a computer.
- Expand definition to include the most economical quantity of parts, supplies, services, etc.
- Revise definition to read, "The quantity of items that represent the most cost efficient amount to order at any one time to support a defined production or consumption rate considering the applicable procurement and inventory costs."

The comments fell into two groups. The first group preferred a generic definition avoiding any formula or calculation. Their suggestions are incorporated into the first part of the revised definition. The second group took a more quantitative or operations research approach to the definition focusing on inventory and holding costs. Their suggestions are reflected in the second part of the revised definition.

c. Proposed definition based upon responses:

ECONOMIC ORDER QUANTITY (EOQ)

- (1) The most economical quantity of items to order at one time to support a defined production or consumption rate.
- (2) A formula-derived order quantity that balances carrying costs (which favors small frequent orders) against set-up or procurement costs (which favors large single orders).

- **Synonyms:** Minimum order quantity, Just-in-Time.
- **Antonyms:** None.

11. Ethics

a. Definition synthesis:

The term "ethics" was difficult to synthesize into a working definition that would help guide an individuals daily activities. Most of the researched definitions were abstract and philosophical in nature. The synthesized definition presented in the questionnaire was:

- ETHICS:** (1) The study of human conduct which deals with right and wrong.
(2) The philosophy of dealing with moral conduct, duty, and judgement.
(3) Conforming to professional standards of conduct.
Synonyms: None.
Antonyms: None.

b. Results:

Thirty five of the sixty two respondents concurred with the definition without comment. Another twenty replies concurred and offered minor comments, mostly changing a word or two or suggesting synonyms and antonyms. Only seven respondents disagreed with the synthesized definition and offered extensive comments. Some of the comments included:

- Delete (1) and (2).

- Concerns making choices in behavior to remain true to our ideals.
- Add that there are mandated requirements of conduct.
- Right and wrong differs when dealing with the Government. Token gifts are okay in business but forbidden in Government contracting.
- Revise definition to read, "Conforming to acceptable standards of conduct and business practices within a specific profession."
- The personal and professional standards of conduct cannot be separated.

Several of the comments indicated that the first two parts of the definition were too general to be of any benefit within the contracting environment, and deleting them did not detract from the definition. The majority of the remaining comments were amplifying in nature and were useful in developing a more practical revised definition.

c. Proposed definition based upon responses:

ETHICS

Conforming to personal and professional standards of conduct and business practices within a specific profession. Individuals in Government and industry who are associated with Government contracting are subject to special statutes and regulations which govern their conduct.

- **Synonyms:** *Morality, standards of conduct.*
- **Antonyms:** *Unethical, immorality.*

12. FIFO (First-In First-Out) Cost Method

a. Definition synthesis:

This term was not difficult to synthesize. All the researched definitions were straightforward and agreed with one another. The synthesized definition was:

FIFO COST METHOD: An inventory flow assumption where ending inventory cost is determined from most recent purchases, and costs of goods sold is determined from oldest purchases including beginning inventory.

Synonyms: None.

Antonyms: LIFO (Last-In First-Out) Cost Method.

b. Results:

Forty two of the sixty two respondents concurred with the definition without comment. Another ten concurred and offered some minor comments. Six individuals did not agree with the synthesized definition, and another four respondents were not familiar with the term. Some of the comments included:

- Why are you working to reinvent the wheel?
- Additional definition is "A method of charging inventory to jobs that is based on the assumption that the inventory materials used in production are always drawn from the oldest stock available and transferred to the actual acquisition cost of that stock."
- Revise definition to read, "The normal physical flow of goods through an inventory system."
- The definition is not even an acceptable method. Revise definition to read, "An inventory pricing assumption that

items are physically used in the same order they were purchased."

The overwhelming concurrence rate and continuity of the researched definitions indicated that only minor revision was necessary. The comments that were received generally fell into two categories. The first concerned the financial aspects of the inventory flow. The second group offered suggestions relating to the physical flow of material. Both are valid and are addressed in the revised definition.

c. Proposed definition based upon responses:

FIFO (First-In First-Out) COST METHOD

(1) A procedure where ending inventory cost is determined from most recent purchases, and costs of goods sold is determined from oldest purchases including beginning inventory.

(2) An inventory pricing assumption where items are physically used in the same order they were purchased.

- **Synonyms:** None.
- **Antonyms:** LIFO (Last-In First-Out) Cost Method.

13. Flowdown Of Contract Requirements

a. Definition synthesis:

This was a difficult phrase to synthesize because only one definition was found among the researched sources. This single definition and the researcher's familiarity with the phrase were the only inputs to the synthesis process. The definition as presented in the questionnaire was:

FLOWDOWN OF CONTRACT REQUIREMENTS: Contract provisions that make subcontractors subject to the same contractual obligations as prime contractors or higher tier subcontractors. In this connection it should be noted that subcontractors are sometimes required to indemnify a

prime contractor in areas where the prime contractor has no similar obligation to the procuring body.

Synonyms: None.

Antonyms: None.

b. Results:

Twenty eight of the fifty one respondents concurred with the definition as written without comment. Another eleven respondents concurred and offered minor comments that did not alter the meaning of the phrase. Twelve respondents indicated that they did not concur with the definition as written, but their comments were amplifying in nature and did not challenge the definition as presented. Some of the comments included:

- Clarify that there are flowdowns required by law or regulation and there are flowdowns that the prime may or may not choose to pass on to the subcontractors.
- Clarify that only some requirements are mandatory. What ends up in the contract is a mixture of negotiating strengths and law.
- Should define indemnify for a better working definition.

There was no significant disagreement from any of the respondents regarding the definition. Many made suggestions to help improve its clarity and those comments were incorporated into the revised definition.

c. Proposed definition based upon responses:

FLOWDOWN OF CONTRACT REQUIREMENTS

Contract provisions that subject subcontractors to the same contractual obligations as prime contractors or higher tier subcontractors. Subcontractors are sometimes required to compensate or protect the prime contractor from damage in areas where the prime contractor has no similar obligation to the procuring activity.

- **Synonyms:** Mandatory flow down clauses.
- **Antonyms:** None.

14. General Provisions

a. Definition synthesis:

The term "general provisions" was not difficult to synthesize. Even though the researched definitions ranged from generic to very specific (in terms of Government contracting) they all conveyed essentially the same meaning.

The synthesized definition was:

GENERAL PROVISIONS: The mandatory (by law or regulation) clauses for all DOD contracts for the type of procurement involved.

Synonym: Boilerplate.

Antonym: Special Provisions.

b. Results:

Twenty nine of the fifty one respondents concurred with the definition without comment. Twenty two respondents commented on the synthesized definition: nine of them indicated concurrence and thirteen noted that they did not concur. The majority of the comments were directed at expanding the definition beyond Department of Defense (DOD) contracts. Some of the comments included:

- It is not limited to DOD contracts only. Expand to include all Government contracts.
- All general provisions are not mandatory. Some may be a requirement of a procuring office but not mandatory by law or regulation.
- The term is also used in the broader sense in subcontracts and purchase orders.
- General provisions are general as to subject but specific to a given command or buying activity. It should not be implied that "general provisions" should not be read with care to find any alterations specific to that situation.

Seven of the respondents pointed out that all "general provisions" are not mandatory, and nine respondents stated that the term has applications outside DOD. Both of the suggestions were helpful in revising the definition.

c. Proposed definition based upon responses:

GENERAL PROVISIONS

(1) A collection of contract clauses that are not specific to a given procurement, but are part of common contract language.

(2) In Government contracting, contract clauses that are mandated by law or regulation or required by local authority.

- **Synonym:** Boilerplate.
- **Antonym:** Special Provisions.

15. Implied Contract

a. Definition synthesis:

This term was not difficult to synthesize because both of the researched definitions conveyed essentially the same meaning. They were both generic in nature and no reference could be found that related specifically to Government contracting. The definition as synthesized was:

IMPLIED CONTRACT: An implied contract is one not created or evidenced by the explicit agreement of the parties. It is inferred by the law, as a matter of reason and justice from the acts or conduct of the parties involved. The surrounding circumstances imply that a contract existed between them by tacit understanding. Implied contracts are not generally recognized as binding in Government contracting.

Synonyms: None.

Antonyms: None.

b. Results:

Nineteen of the fifty one respondents concurred with the definition without comment. Twenty three respondents concurred with the definition, but offered modifying comments. Another nine replies disagreed with the synthesized definition. The only recurring comments challenged the statement that implied contracts were not generally recognized as binding in Government contracting. A sample of the remaining included:

- Implied contracts are frequently recognized as binding in Government contracting. Implied in fact contracts are created when the Government accepts benefit with knowledge that the contractor expects to be compensated

even though an express offer and acceptance may be absent.

- Suggest discussion of constructive change or ratification with this definition.
- Keep definition acceptable to both Government and civilian.

Several of the comments were helpful in clarifying the definition by recommending revised wording. However, the statement, "Implied contracts are not generally recognized as binding in Government contracting" generated considerable controversy. Ten respondents disagreed with the statement while several others made comments supporting it. It was eliminated from the revised definition because of the conflicting comments and because it was originally included as amplifying information. Its elimination does not detract from the definition.

c. Proposed definition based upon responses:

IMPLIED CONTRACT

A bilateral understanding evidenced by the implicit agreement of the parties. Contract formation is inferred by law, as a matter of reason and justice from the acts or conduct of the parties involved. The surrounding circumstances imply that a contract existed between the affected parties.

- **Synonyms:** Verbal agreement, verbal contract, implied agreement.
- **Antonyms:** Expressed contract.

16. Inventory

a. Definition synthesis:

The term "inventory" presented some unique challenges in the synthesis process. It has widespread application and therefore there were ample referenced definitions available. The difficulty was in synthesizing a definition that had particular relevance within the acquisition and contracting context without being too general. The synthesized definition was:

INVENTORY: (1) The amount of property on hand at any given time.

(2) An itemized list of property amounts indicated as on hand at a particular time.

(3) Goods held for sale or lease or furnished under contracts of service; also raw materials, work in process or materials used or consumed in a business.

Synonyms: None.

Antonyms: None.

b. Results:

The commentary was light and varied. Thirty of the fifty one respondents concurred with the definitions as written without comment. An additional fifteen respondents also concurred with the definition and offered some minor comments. The comments were primarily suggestions for synonyms and antonyms. Six respondents did not concur. The comments included:

- Revise definition (1) to read, "The amount of company owned, useful property on hand at any given time."
- Definition (3) is redundant and doesn't take into account items on hand which will be used for internal purposes.

- Inventory can refer to an accounting process, a list of property, or physical/intellectual property owned or possessed. Definition should differentiate the activity of an inventory which may be required (say during T/C) from the listings of possessions and the property itself.

In addition to the above comments three respondents suggested deleting definition (1) entirely. Another two respondents wanted to delete definition (2) while two other respondents recommended deleting definition (3). There were no recurring inadequacies in the definitions drawn from the comments. Therefore, only minor changes were made to the existing definition to enhance clarity.

c. Proposed definition based upon responses:

INVENTORY

- (1) The amount of property or material on hand at any given time.
- (2) An itemized list of property or material indicated as on hand at a particular time.
- (3) Goods held for sale or lease. Also, raw materials, work in process, or materials used or consumed in a business.

- **Synonyms:** Stock.
- **Antonyms:** None.

17. Letter Contract

a. Definition synthesis:

"Letter Contract" was not difficult to synthesize. The researched definitions conveyed the same meaning and in many cases used nearly identical wording. The definition as synthesized was:

LETTER CONTRACT: A written preliminary contractual instrument that authorizes the immediate commencement of activity under its terms and conditions, pending definitization of a fixed price or a cost reimbursement pricing arrangement for the work to be done. Must specify the maximum liability of the buyer and be superseded by a definite contract within a specified time. In Federal Government contracting it is generally not used except when a written determination is made that no other type of contract is suitable.

Synonyms: None.

Antonyms: None.

b. Results:

Twenty five of the fifty one respondents concurred with the synthesized definition without comment. Also, an additional sixteen concurred and offered only minor comments. Another ten respondents disagreed with the synthesized definition and made various suggestions for improvement. The comments were varied and the following is a representative sample:

- Revise definition to read, "...pending definitization of pending contractual details including the pricing arrangement...contract is suitable under the circumstances."
- Delete the last sentence. It is an explanation, not part of the definition.
- Must specify the maximum liability of the buyer and be superseded by a definitive contract within a specified time. Under this agreement, the maximum liability of the Government is the estimated amount necessary to cover the contractor's requirements for funds before

definitization. This amount may not exceed 50% of the contract price."

- Specify that "liability" refers to "financial liability."

The questionnaire comments were very helpful in clarifying the language in the definition. However, there were no substantive comments that would cause a major change in the synthesized definition. Once again, several respondents took exception to clarifying data being made part of the definition. As was previously pointed out, amplifying commentary to definitions is an accepted convention in American dictionaries and the researcher saw no reason to delete that sentence.

c. Proposed definition based upon responses:

LETTER CONTRACT

A written preliminary contractual instrument that authorizes the immediate commencement of activity under its terms and conditions, pending negotiation and definitization of contractual details including the pricing arrangement for the work to be done. It must specify the maximum financial liability of the buyer and be superseded by a definitive contract within a specified time. In Government contracting it is generally not used except when a written determination is made by the head of the contracting activity that no other type of contract is suitable.

- **Synonyms:** Letter agreement, authority to proceed.
- **Antonyms:** Definitized contract.

18. Multiyear Contract

a. Definition synthesis:

The term "Multiyear Contract" was not difficult to synthesize because there were numerous definitions available. They varied as to how much detail they presented,

but they conveyed essentially the same meaning. Additional definitions referred to "Multiyear Procurement." Although their perspective was in a larger context, they were also helpful in synthesizing the definition. The synthesized definition presented in the questionnaire was:

MULTIYEAR CONTRACT: A contract covering more than one year's but not more than five year's worth of requirements, unless otherwise authorized by statute. Total contract quantities and annual quantities are planned for a particular level and type of funding as displayed in the current six year development plan. Each program year is annually budgeted and funded, and at the time of award funds only need to have been appropriated for the first year. Failure to fund the next annual requirement cancels the contract. The contractor is protected against loss resulting from cancellation by contract provisions which allow reimbursement of costs included in the cancellation ceiling.

Synonyms: None.

Antonyms: None.

b. Results:

The comments were varied and did not point specifically to any deficient areas. Twenty two of the forty nine respondents concurred with the definition as written. Another sixteen concurred as well, but offered minor comments that were generally editorial in nature. Ten respondents did not concur with the definition and offered more extensive comments. One individual was not familiar with the term. The comments included:

- Clarify that the cancellation ceiling is predetermined and written into the contract.
- Draw a distinction between termination and cancellation.

- Note that economic order quantities of material may actually be purchased in excess of one year's requirements.
- In Government contracting applies only to fixed price contracts. See FAR 17.102-3(b).
- The purpose of multiyear contract is to reduce costs through economical production cycle planning and permit necessary up front investment.
- Contractors are only partially protected from the non-recurring costs spread over multiyear cancellation.

Several of the comments were quite relevant, but beyond the scope of the definition. For example, the issue of clarifying a "cancellation" verses a "termination" is an important issue, but it would be more appropriate to define them independently. Determining the parameters of the cancellation ceiling would also be meaningful, but again beyond the scope of the definition. Other comments were helpful in making the definition more readable.

c. Proposed definition based upon responses:

MULTIYEAR CONTRACT

A contract for a term potentially greater than one year but not more than five years, unless otherwise authorized by statute. Annual requirements and expenditures and total requirements and expenditures over the basic year of the contract and subsequent years are planned for a particular level and type of funding, as set forth in the current six year development plan. Each program year is budgeted and funded annually. At the time of award, funds need have been appropriated only for the first year. Failure to fund any successive year cancels the contract. The contractor is protected against loss resulting from cancellation by contract provisions which allow

reimbursement of costs included in the cancellation ceiling.

- **Synonyms:** None.
- **Antonyms:** Annual Contract.

19. Patent

a. Definition synthesis:

Synthesizing "patent" was unique in that the term has two separate and distinct meanings in the acquisition and contracting field. The researched definitions provided ample support for both. The definition presented in the questionnaire departed from the previous pattern i.e., multiple parts beginning with a general context and becoming progressively more specific. The following synthesized definition conveys two distinct meanings:

PATENT: (1) Open; manifest, evident; unsealed. Used in this sense in such phrases as "patent ambiguity," "patent writ", "letters patent."

(2) A grant made by the Register of Patents of the United States under the authority of federal legislation to an inventor, which gives the patentee the exclusive right to make, use, and sell the patented article for a specified number of years.

Synonyms: None.

Antonyms: None.

b. Results:

Twenty two of the forty nine respondents concurred with the synthesized definition without comment. Eighteen respondents concurred and offered minor comments, mostly suggesting synonyms and antonyms. Only nine respondents did not concur with the definitions as written and offered more substantial comments. The comments included:

- Revise definition (1) to read, "patent defect" vice "patent writ." This is more easily understandable.
- Working definition for (1) needs to center on defining "patent ambiguity" and "patent defects." Add to (1), "discovered readily by an ordinary examination or test."
- Revise definition (2) to read, "seven years" vice "a specified number of years."
- Note that the patent may apply to a design rather than a physical article.
- Clarify that patents are not necessarily recognized in other countries.
- Definition (1) is too legalistic, try to simplify.

There were no recurring patterns of dissent on either of the two parts of the definition. Based on the comments the definition was reworked to remove some of the legalistic jargon to make it more "user friendly". These modifications did not alter the meaning of the term.

c. Proposed definition based upon responses:

PATENT

(1) Open; manifest; obvious; evident. Used in this sense as a "patent defect" which is a defect discovered readily by an ordinary examination or test.

(2) A Government grant of exclusive rights to an inventor that prohibits others from making, using, or selling the patented article for a specified number of years. Patents are not necessarily recognized outside the United States.

- **Synonyms:** Apparent, obvious, evident.
- **Antonyms:** Latent, hidden.

20. Procurement Package

a. Definition synthesis:

This term was difficult to synthesize into a definition that the researcher had confidence in before releasing in the questionnaire for two reasons, (1) only two researched definitions were found, and (2) the definitions were complementary rather than reinforcing a singular meaning. Extensive commentary was anticipated from the respondents. The synthesized definition released in the questionnaire was:

PROCUREMENT PACKAGE: (1) The information required to obtain bids or proposals. It is comprised of the technical data package describing the item or service to be procured together with all applicable administrative, legal, and fiscal provisions that are necessary for a clear and complete description of the item or services desired and the conditions governing the proposed contractual agreement between the Government and the supplier.

(2) The technical information necessary to adequately describe the item or service to be procured.

Synonyms: None.

Antonyms: None.

b. Results:

Twenty of the forty nine respondents agreed with the synthesized definitions. Eleven concurred with the definitions and offered comments. Eighteen respondents did not concur with the definition as presented in the questionnaire. Although several of the respondents did comment on the definitions they were not as extensive as anticipated. Some of the more significant comments included:

- Definition needs to be simplified for training purposes.
- Difficult to define and implement a "clear and complete description."
- Delete definition (2) because it refers only to the specs or statement of work. As such, it would be only a portion of the "procurement package." Definition (2) refers to a procurement request needed to develop a procurement package.
- A solicitation package contains more than technical information. It includes the solicitation in uniform contract format which details clauses, provisions and certifications. It also includes delivery requirements, technical specifications and applicable drawings or other referenced materials.

Several respondents noted that definition (2) was too narrowly focused and referred only to the technical data package. They also pointed out that it was contained within definition (1) and was therefore redundant. Eliminating definition (2) and slightly revising the first definition helped improve clarity without substantially altering the meaning.

c. Proposed definition based upon responses:

PROCUREMENT PACKAGE

The information prepared by the Government to solicit bids or proposals. It is comprised of the technical data package necessary to adequately describe the item or service to be procured together with all applicable administrative, legal, and fiscal information necessary for a clear and complete description of the item or service desired and the conditions governing the proposed

contractual agreement between the Government and the supplier.

- **Synonyms:** None.
- **Antonyms:** None.

21. Requirement

a. Definition synthesis:

There were several published definitions available upon which to base the synthesized definition that defined the term in varying levels of detail. The difficulty in synthesizing the definition for the questionnaire was in determining the level of detail to include. The definition included in the questionnaire was:

REQUIREMENT: The need or demand for personnel, equipment, facilities, and other resources or services. Exact quantities and duration should be specified as applicable.
Synonyms: None.
Antonyms: None.

b. Results:

Twenty eight of the forty nine respondents agreed with the synthesized definition as presented and offered no comments. Another ten respondents concurred as well, but included some minor comments. They included adding or deleting a word or changing the word order slightly. An additional eleven respondents disagreed with the definition and offered revisions or amplifying comments. A sample of the more significant comments follows:

- Note the difference between "requirement" and a "requirements contract," where exact quantities do not apply and quantities are expressed as estimated.

- Revise definition to read, "...resource or services to meet an organization's mission. Exact quantities and duration should be specified as applicable. This forms the basis of a solicitation as communicated to contracting personnel through the procurement package."
- Change "resources" to "supplies."
- Change "duration" to "delivery or performance schedule."
- Definition is too broad to be of any value to the acquisition community.

While only two respondents commented that the definition was too general in nature, this was deemed significant because of the researcher's initial reservations with the synthesized definition. The proposed revision is intended to narrow the focus enough to make it more applicable in the acquisition environment without overly limiting its application. Two other suggestions were also incorporated into the revision. "Resources" was changed to "supplies" and "duration" was changed to "delivery or performance schedule."

c. Proposed definition based upon responses:

REQUIREMENT

The need or demand for personnel, equipment, facilities, and other supplies or services. Exact quantities and delivery or performance schedule should be specified as applicable. This forms the basis of a solicitation as communicated to contracting personnel through the procurement package.

- **Synonyms:** None.
- **Antonyms:** None.

22. Unsolicited Proposal

a. Definition synthesis:

There was little difficulty in synthesizing "unsolicited proposal." Several published definitions were reviewed and they all conveyed essentially the same meaning. Most of the definitions were directed specifically at Government contracting while others pointed out that "unsolicited proposals" have valid commercial applications as well. The synthesized definition was:

UNSOLICITED PROPOSAL: A written proposal that is submitted to a potential buyer on the submitter's initiative for the purpose of obtaining a contract with the buyer. It is not in response to a formal solicitation.
Synonyms: None.
Antonyms: None.

b. Results:

There was strong concurrence with the synthesized definition. Thirty three of the respondents concurred with the definition as written without comment. Another ten respondents concurred offering some minor comments. Six respondents disagreed with the definition as written. The comments included:

- Add "informal" to definition. Project officers have been known to encourage contractors. A true unsolicited proposal is strictly at the contractor's initiative (e.g. not contained in a Government budget request as initiated by the Government). One of the primary concerns about unsolicited proposals is that they often result from

informal requests/solicitations in order to avoid the formal procurement process.

- Needs expansion. A lot of buying commands won't seriously entertain true unsolicited proposals unless they have been pre-sold because it impacts on competition.
- Add that it is to be treated as a non-competitive acquisition.

The only recurring comment was that the second sentence should read, "It is not in response to a formal or informal solicitation." This is the true intent of an "unsolicited proposal" but the researcher's discussions with contracting professionals showed that actual practice differs. As previously stated the intent of this thesis is to develop working definitions based on the daily practice of contracting professionals. Therefore the recommendation was not accepted. Because of the overwhelming concurrence with the synthesized definition, no revisions were made.

c. Proposed definition based upon responses:

UNSOLICITED PROPOSAL

A written proposal that is submitted to a potential buyer on the submitter's initiative for the purpose of obtaining a contract with the buyer. It is not in response to a formal solicitation.

- **Synonyms:** None.
- **Antonyms:** Request For Proposal, solicited proposal.

C. SUMMARY

This chapter detailed the research, data collection, and analysis of the terms not covered in Chapter III. Synthesized definitions were developed and included in the questionnaire and the resulting responses were used to develop revised definitions. Where applicable, synonyms and antonyms were included. A summary of all revised definitions, synonyms, and antonyms are included in Appendix C.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

This chapter reflects the conclusions and recommendations drawn from this thesis effort. It includes observations drawn while conducting the research and recommendations for improving subsequent follow on efforts. It concludes with an answer to the primary research question posed at the beginning of this thesis along with a summary of the chapter.

B. CONCLUSIONS

Since this is a follow on to well defined theses previously completed by students at NPS and AFIT the researcher expected to come to many of the same conclusions. The conclusions drawn by Ryan, Florek, and Downs seemed particularly applicable.

1. The product of this thesis will add to the body of knowledge which makes up the contracting discipline.

[Ref. 1: p. 79] [Ref. 2: p. 51] [Ref. 3: p. 58]

The 25 terms defined in this thesis combined with the terms from the previous efforts provides a solid core that forms the basis from which a viable contracting dictionary can be developed. Follow on research needs to continue and expand the volume of terms and definitions.

2. The observations of questionnaire respondents reflected a concern for the continued development of the

contracting discipline. [Ref. 1: p. 79] [Ref. 2: p. 52]
[Ref. 3: p. 59]

The exceptional response rate to the questionnaire indicated a great desire among the respondents to help contribute to the body of knowledge. Additionally, several respondents positively concurred with the need for this research effort and even more were eager to get a copy of the dictionary when published.

3. There is not universal agreement concerning the meaning of most contracting terms. [Ref. 1: p. 80] [Ref. 2: p. 52] [Ref. 3: p. 59]

Even in the terms with the highest concurrence rates there were still valid comments made by the dissenters. This further highlights the need for a comprehensive compilation of contracting terms.

4. The procedure used in this thesis to achieve consensus on term definitions as used in contracting is valid. [Ref. 1: p. 80] [Ref. 2: p. 52] [Ref. 3: p. 59]

The significant concurrence rates on most terms seemed to indicate this. The only way to develop viable working definitions within a technical discipline is to involve the individuals at the grass roots level. The two step process employed here allowed just that: First, the initial definitions were synthesized from the works of published contracting professionals, and then they were presented to

contracting discipline professionals at large to develop a consensus.

5. The inclusion of synonyms and antonyms contributed very little to the thesis.

This is a slight variation of an observation made by Florek and Downs when they stated, "The inclusion of synonyms and antonyms was basically ignored by the respondents." [Ref. 2: p. 52] [Ref. 3: p. 59] Few respondents provided synonyms or antonyms, and when they did they rarely had any supporting comment. It was often difficult to see anything but a distant relationship to the subject term. The design of the questionnaire was at least partly responsible and this will be addressed in the recommendations.

C. RECOMMENDATIONS

1. The terms deemed non controversial that are analyzed in Chapter III should be added to those of previous research to be incorporated into the contracting dictionary.

These terms achieved a good consensus among the respondents even though some of them generated many comments. Florek and Downs recommended "A procedure be established to conduct a second consensus of all definitions in this thesis and any other such effort." [Ref. 2: p. 53] [Ref. 3: p. 60] With the large response and concurrence rate of this thesis it would appear to be a valid approach only for the terms deemed controversial.

2. Subject the terms deemed controversial in Chapter II to an additional consensus in a manner similar to that being employed by Lieutenant Robert Wilson, SC, USN in his thesis project running concurrently with this one.

The controversial terms would be combined with those from other theses and distributed in a questionnaire to solicit comments. Revised definitions would be developed from the respondent comments and a second questionnaire would be distributed to the individuals who responded to the initial request. If an adequate concurrence rate was not achieved it could be repeated as necessary. This process should substantially improve the quality of the controversial term definitions.

3. Establish a standardized questionnaire format in a manner to encourage a generous response rate.

This need for a standard questionnaire to be used by all researchers was first addressed by Florek and Downs. [Ref. 2: p. 54] [Ref. 3: p. 61] The questionnaire should stress the importance of including justification for both changes to the definition and suggested synonyms and antonyms.

The approach taken in this thesis was slightly different than previous efforts and it produced desirable results. Rather than including all twenty five terms in one questionnaire, five separate questionnaires with five terms each were developed and distributed in separate mailings of

one hundred each. The target audience included individuals who hold the CPCM/CACM vice NCMA Fellows as used previously. This revised approach garnered an aggregate response rate of 54%. Using this method in the future should produce similar results.

4. Future research questionnaires should be followed up with a reminder letter.

Following up about one week after the questionnaire was distributed increased the response rate at least three to five percent. Further, there was a 100% questionnaire response from the individuals who requested an additional survey after learning that the initial mailing had failed to reach them.

D. RESEARCH QUESTION ANSWER

The primary research question was : To what extent can standard meanings be arrived at in the evolving field of contracting in which words are used with various meanings?

Ryan's answer to the same question in his thesis is still valid:

A 100 percent agreement on an exact definition for any given contracting term is not likely to occur, but a definition which represents a consensus can occur with success as demonstrated by the results of this thesis. Definition consensus is realistically achievable in a fixed amount of time utilizing published definitions and glossary "explanations" as the basis for synthesized definitions which can be subjected to criticism of a representative body of practitioners. [Ref. 1: p. 83]

Contracting professionals can develop a consensus of the terms used as part of their day to day business. There will always be dissenters among the group who don't think the

process is worthwhile or even valid, but based on this research they are few in number. "Enforcing" the standard meanings will be a difficult task in the dynamic contracting discipline.

E. GENERAL COMMENTS

Florek and Downs were not satisfied with the response rate they achieved or the quality of the responses. This was a major factor in deciding to limit each questionnaire to only five terms in this thesis. The use of the CPCM/CACM membership also helped expand the number of potential respondents. These two factors improved the quality and quantity of the data necessary to complete the research.

One drawback of the process as it was conducted was the amount of researcher subjectivity involved in synthesizing the definitions. This problem was identified by the previous researchers as well. The recurring comments were easier to justify incorporating into the revised definition. The difficulty arose when only one respondent made a particular comment and it was deemed significant by the researcher.

The questionnaire generated a great deal of enthusiasm for the entire project. Several people, from Government and Industry, took the time to write personal letters supporting the consolidation effort and offering additional future support. Several more are anxiously awaiting the dictionary's publication.

F. SUMMARY

This chapter offered conclusions and recommendations regarding this research effort. Strengths and weaknesses of the process were highlighted and suggestions to help follow on researchers were also offered.

A comprehensive dictionary of acquisition and contracting terms will make a lasting contribution to the profession. The opportunity to contribute to it was challenging, and knowing that it will be actively used in the future by students and practitioners made it a very worthwhile experience.

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APPENDIX A: PUBLISHED DEFINITIONS

This appendix details the published definitions from which the 25 terms used in the questionnaire were developed. The following terms were examined:

- Amendment
- Assignment
- Bidders' Conference
- Conflict of Interest
- Contract Modification
- Delinquency
- Escalation
- Fifo Cost Method
- General Provisions
- Inventory
- Multiyear Contract
- Procurement Package
- Unsolicited Proposal
- Arbitrary
- Bailment
- Boilerplate
- Consideration
- Default
- Economic Order Quantity
- Ethics
- Flowdown of Contract Requirements
- Implied Contract
- Letter Contract
- Patent
- Requirement

AMENDMENT

- The act of altering formally by modification, deletion, or addition. [Ref. 4:p. 78]
- To change or modify for the better. To alter by modification, deletion, or addition. [Ref. 5:p. 74]
- A written alteration to an existing agreement, pertaining to the conditions of the agreed work. [Ref. 6:p. 51]
- A revision or change to improve or correct a document; often used to correct Invitations For Bid (IFBs) as distinguished from a "modification," which is generally used in procurement to change an existing contract. [Ref. 7:p. 2]

ARBITRARY

- Existing or coming about seemingly at random or by chance as a capricious and unreasonable act of will. Depending on individual discretion and not fixed by law. [Ref. 4:p. 99]
- Means in an arbitrary manner, as fixed or done capriciously or at pleasure. Without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgement; depending on will alone. Without fair, solid or substantial cause; that is, without cause based on the law; not governed by any fixed rules or standard. Ordinarily arbitrary is synonymous with bad faith or failure to exercise honest judgement and an arbitrary act would be one performed without adequate determination of principle and one not founded in the nature of things. [Ref. 5:p. 96]
- A determination made willfully by whim or caprice; unreasonable, changeful, and tyrannical; used as in 'arbitrary and capricious action.' To express irrational disregard of facts and circumstances. [Ref. 7:p. 2]

ASSIGNMENT

- The transfer of property. [Ref. 4:p. 109]
- A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. It includes transfers of all kinds of property including negotiable instruments. The transfer by a party of all its rights to some kind of property such as rights to lease, mortgage, agreement of sale or partnership. Tangible property is more often transferred by possession and by instruments conveying title such as a deed or bill of sale. [Ref. 5:p. 104]
- Transference of some property right or title to another party. This term is frequently used in connection with bills of lading which are endorsed (assigned) over to another party (the assignee) by the owner of the bill (assignor). Such endorsement gives to the party named

the title to the property covered in the bill of lading.
[Ref. 8:p. 31-3]

- The placing with, by specified authority, a property administrator, a contract, a subcontract, or authorizing document for performance of property administration functions in one of the following ways: (1) By specific contract number. (2) On a contractor basis when the volume of contracts so warrants (AFSCM 78-1). [Ref. 6:p. 72]
- The allocation of an aerospace vehicle by HQ USAF (Headquarters, United States Air Force) for mission accomplishment (AFR 65-110). [Ref. 6:p. 72]
- Legal transfer of a claim, right, interest, or property. [Ref. 7:p. 2]

BAILMENT

- A delivery of goods or personal property, by one person to another, in trust for the execution of a special object upon or in relation to such goods, beneficial either to the bailor or bailee or both, and upon a contract, express or implied, to perform the trust and carry out such object, and thereupon either to redeliver the goods to the bailor or otherwise dispose of the same in conformity with the purpose of the trust. [Ref. 5:p. 129]
- The delivery of personal property to another for a special purpose, on condition that the property will be returned pursuant to agreement. [Ref. 7:p. 3] [Ref. 8:p. 31-3]
- The lending of Government owned property to a contractor for the performance of a contract. [Ref. 9:p. 6]
- A delivery of Government property to a contractor for a specific purpose directly related to a prime contract which is to be returned, or accounted for, to the Government when the special purpose is accomplished. Bailment does not include: (1) sale, (2) donation, (3) lease, (4) the furnishing of property to a contractor under a facilities contract, or (5) the furnishing of Government property for consumption or in such a manner as to lose its identity into an end product delivered to the Government (DSAM 8135-1). [Ref. 6:p. 85]
- The act of delivering property in trust to another for a special purpose and for a limited period. [Ref. 4:p. 125]

BIDDERS CONFERENCE

- A Pre-Bid Conference is used, generally in a complex acquisition as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. It shall never be used as a substitute for amending a defective or ambiguous invitation. [Ref. 10:p.

14.207]

- In sealed bid procurements, a meeting of prospective bidders arranged by the contracting officer during the solicitation period to help solicited firms fully understand the government's requirements and to give them an opportunity to ask questions. [Ref. 9:p. 7] [Ref. 11:p. 8]
- A meeting of prospective bidders, arranged by the procurement office, to help potential bidders, understand the requirements of the IFB (Invitation For Bid). [Ref. 7:p. 3]

BOILERPLATE

- Standardized, formulaic, or hackneyed language. [Ref. 4 :p. 165]
- Prearranged format--applies to anything which is not subject to frequent change. [Ref. 11:p. 8]
- A colloquialism, used in purchasing to identify standard terms and conditions incorporated in solicitations, contracts, or purchase orders; usually preprinted and incorporated by reference. [Ref. 7:p. 4]
- Language which is used commonly in documents having a definite meaning in the same context without variation; used to describe standard language in a legal document that is identical in instruments of a like nature. [Ref. 5 :p. 159]

CONFLICT OF INTEREST (PERSONAL)

- A conflict between the private interests and official responsibilities of a person in a position of trust (as a government or corporate official). [Ref. 4:p. 276]
- The actual or potential conflict in which a person may gain from (or hold interest in) a company doing business with his employer.) [Ref. 7:p. 6]
- No employee (including members of the immediate family) may directly or indirectly benefit personally from his position or connections as an employee or from any sale or purchase or other activity of the company. [Ref. 8:p. 7-6]
- Term used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them. Ethical problems connected therewith are covered by statute in most jurisdictions and by federal statute at the federal level. Generally, when used to suggest disqualification of a public official from performing his sworn duty, the term 'conflict of interest' refers to a clash between public interest and the private pecuniary interest of the individual concerned. [Ref. 4:p. 271]

CONFLICT OF INTEREST (ORGANIZATIONAL)

- Exists when the nature of work to be performed under a proposed Government contract may, without some restrictions on future activities, (a) result in an unfair competitive advantage to the contractor or (b) impair the contractor's objectivity in performing the contracted work. [Ref. 10:p. 9.501]

CONSIDERATION

- The inducement to a contract or other legal transaction; specifically: an act of forbearance or the promise thereof done or given by one party in return for the act or promise of another. [Ref. 4:p. 280]
- The inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract. [Ref. 5:p. 277]
- Something of value given or done as a recompense which is exchanged by two parties; that which binds a contract. [Ref. 7:p. 6]
- Something of value given for a promise to make that promise binding. [Ref. 8:p. 31-8]

CONTRACT MODIFICATION

- A change; an alteration or amendment which introduces new elements into the details, or cancels some of them but leaves the general purpose and effect of the subject matter intact. [Ref. 5:p. 905]
- Means any written change in the terms of a contract. This can be (a) bilateral. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to--(1) make negotiated equitable adjustments resulting from the issuance of a change order; (2) definitize letter contracts; and (3) reflect other agreements of the parties modifying the terms of contracts. (b) unilateral--A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to--(1) make administrative changes; (2) issue change orders; (3) make changes authorized by clauses other than a change clause (e.g., Property clause, Options clause, Suspension of Work clause, etc.); (4) issue termination notices. [Ref. 10:p. 43.103]
- A unilateral or bilateral written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other provision of an existing contract, made in accordance with a contract clause (e.g., change order, notice of termination, supplemental agreement, exercise of contract option). [Ref. 9:p. 12] [Ref. 8:p. 31-10] [Ref. 12:p. 469]

- A written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provision of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes: (i) bilateral actions such as supplemental agreements and (ii) unilateral actions such as change orders, orders for provisional items and notices of the exercise of a contract option. [Ref. 13:p. 280] [Ref. 14:p. 72]
- As employed in federal government contracting, this term refers to any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other provision of an existing contract, whether accomplished by unilateral action (Change Order) in accordance with a contract provision or by mutual action of the contracting parties (Supplemental Agreement). [Ref. 15:p. 146]
- A unilateral or bilateral written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other provision of an existing contract resulting from a change order. [Ref. 16:p. 496]
- A written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, etc. May be a bilateral or unilateral action. [Ref. 7:p. 8]
- A change (unilateral or bilateral) of an existing contract regardless of the classification of the original contract award, i.e., competitive, non competitive, or follow-on. [Ref. 17:p. 345]

DEFAULT

- (1) Failure to do something required by law. (2) To fail to fulfill a contract, agreement, or duty. [Ref. 4 :p.]
- By its derivation, a failure. An omission of that which ought to be done. Specifically, the omission or failure to perform a legal or contractual duty. [Ref. 5:p. 317]
- When a contractor fails to perform according to requirement of the contract. [Ref. 15:p. 50]
- When a contractor fails to perform at the appointed time or fails to make progress which may endanger performance at the appointed time, even though that time hasn't arrived. Also when a contractor fails to conform with various material provisions of the contract. [Ref. 17:p. 389]
- Failure by a party to a contract to comply with contractual requirements. [Ref. 7:p. 9]
- Failure by a party to a contract to comply with contractual requirements; vendor failure. [Ref. 12:p. 471]

DELINQUENCY

- Offending by neglect or violation of duty or of law. [Ref. 4:p. 336]
- Includes (i) actual failure by the contractor--that is, his failure, regardless of reason, to meet the contract delivery or performance schedule; and (ii) potential failure by the contractor--that is, his failure, regardless of reason, to maintain such progress in contract performance as is required to meet his contract delivery or performance schedule (DAC 76-17). [Ref. 6:p. 208-209]
- Failure, omission, violation of law or duty. State or condition of one who has failed to perform his duty or obligation. [Ref. 5:p. 385]

ECONOMIC ORDER QUANTITY

- Techniques with formula defining the quantity to buy at one time that will achieve the lowest unit cost. [Ref. 8 :p. 31-13]
- An annual buy quantity for stocking list items which considers the cost to order as related to the cost of the item (AR 320-5). [Ref. 6:p. 246-247]
- A quantity of material established for each item based on mathematical formulas or tables, which relates the variable cost to hold material versus variable cost to buy for the determination of a balanced optimum order quantity representing a minimum total variable cost (AR 320-5). [Ref. 6:p. 246-247]
- The quantity to be ordered, computed on the basis of minimizing total variable costs of operation (DOD 4140.20). [Ref. 6:p. 246-247]
- A variable requirement for an economic order and stockage program item computed as a function of the cost to order, cost to hold, the unit price, and the annual requirements rate (AFM 67-1). [Ref. 6:p. 246-247]
- An order quantity, to be purchased or manufactured at one time, that provides the lowest unit cost; acquisition and inventory cost at a minimum cost per unit. [Ref. 7:p. 11]
- That order that minimizes total variable cost, including both the stock holding costs and the procurement costs. [Ref. 12:p. 472]
- The most economical quantity of parts to order at one time to support a defined production rate considering the applicable procurement and inventory costs. [Ref. 11 :p. 26]

ESCALATION

- A term traditionally used to indicate an upward or downward movement of price. "Economic Price Adjustment" is the contemporary term used to express the sense of escalation. [Ref. 17:p. 436]

- Indicates an upward or downward movement of price. Economic Price Adjustment is the contemporary term used to express the sense of escalation. [Ref. 9:p. 21]
- An amount or percent by which a contract price may be adjusted if contingencies occur, such as changes in the vendor's raw material or labor costs. [Ref. 8:p. 31-13]
- Use of a price index to convert past to present prices or of converting present to future prices; increases due to inflation. [Ref. 11:p. 28]
- Escalation Clause: A contract provision which permits the adjustment of the contract price by an amount or percent if certain specified contingencies occur, such as changes to the vendor's raw material or labor costs. [Ref. 7:p. 12]
- (A provision that is) used to protect the contractor and the government against significant economic fluctuations in labor or material costs or to provide for contract price adjustments in the event of changes in the contract's established price. [Ref. 16:p. 307]
- Economic Price Adjustment: An alteration permitted and specified by contract provisions for the upward or downward revision of a stated contract price upon the occurrence of certain contingencies that are defined in the contract. [Ref. 17:p. 436]

ETHICS

- (1) The discipline dealing with what is good and bad and with moral duty and obligation. (2) A set of moral principles or values. (3) Conforming to acceptable professional standards of conduct. [Ref. 4:p. 426]
- Of or relating to moral action, conduct, motive or character; as, ethical emotion; also, treating of moral feelings, duties or conduct; containing precepts of morality; moral. Professionally right or befitting; conforming to professional standards of conduct. [Ref. 5 :p. 496]
- The study and philosophy of human conduct, with emphasis on determination of right and wrong. [Ref. 8:p. 31-14]
- The study of human conduct which deals with right and wrong: the philosophy of dealing with moral conduct, duty, and judgement: conforming to professional standards of conduct. [Ref. 7:p. 12]

FIFO COST METHOD

- An inventory flow assumption by which ending inventory cost is determined from most recent purchases and cost of goods sold is determined from oldest purchases including beginning inventory. Contrast with LIFO. [Ref. 5:p. 565]
- An inventory term which describes a method of storing and issuing. [Ref. 7:p. 13]
- First In First Out; the first put in is taken out first. Applies principally to materials held in inventory. [Ref.

FLOWDOWN OF CONTRACT REQUIREMENTS

- **Mandatory Flowdown Clauses:** Contract provisions making sub-contractors subject to the same contractual obligations as prime contractors--contractors doing business directly with the procuring body. In this connection, it should be noted that subcontractors are sometimes required to indemnify a prime contractor in areas where the prime contractor has no similar obligation to the procuring body. [Ref. 14:p. 122]

GENERAL PROVISIONS

- The collection of contract clauses not specific to a given procurement but part of the contract language. [Ref. 9:p. 26]
- Contract clauses applicable throughout the Department of Defense or the Government to a specific type of contract (DOD 5000.8). [Ref. 6:p. 317]
- The mandatory (by law or regulation) clause for all DOD contracts for the type of procurement involved--sometimes called "boilerplate". The clauses devised particularly for the procurement are called Special Provisions. [Ref. 11:p. 35]
- The portion of a contract generally called "boilerplate" which incorporates all standard clauses and requirements which are common to all contracts. [Ref. 7:p. 14]

IMPLIED CONTRACT

- An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding. [Ref. 5:p. 292]
- A contract which is essentially based on the intentions of the parties. "It arises where the court finds from the surrounding facts and circumstances that the parties intended to make a contract but failed to articulate their promises and the court merely implies what it feels the parties really intended. It would follow then that the general contract theory of compensatory damages should be applied." (Hill v Waxley Construction Company). [Ref. 14:p. 145]

INVENTORY

- (1) An itemized list of current assets. (2) The quantity of goods or materials on hand (stock). (3) The act or process of taking an inventory. [Ref. 4:p. 636]
- (1) The amount of property on hand at any given time. (2) An itemized listing of amounts of property indicated

as on hand at a particular time. A physical inventory is one determined by actual physical count of the items. A book inventory is one determined from the records maintained in connection with day to day business activities. [Ref. 8:p. 31-17]

- Goods held for sale or lease or furnished under a contract for service; also, raw materials, work in process, or materials used or consumed in a business. Also, a written schedule of such goods. [Ref. 5:p. 740]
- The stock of goods on hand or an itemized list of a stock of goods indicating volume and values. Where ascertained by enumeration, it is labeled physical inventory; by periodic recording, it is labeled book inventory. [Ref. 12:p. 475]
- Goods in stock or an itemized list of a stock of goods showing volume and value. [Ref. 7:p. 16]
- A physical count of items located within an installation (AFR 69-8, DOD 5000.8). [Ref. 6:p. 366]
- The act of inspection to determine the physical existence of property (DOD 5000.8). [Ref. 6:p. 366]
- A physical count of property on hand (by weight or other measurement) (DOD 5000.8). [Ref. 6:p. 366]
- The amount of property on hand at any given time (DOD 5000.8, AFM 67-1). [Ref. 6:p. 366]
- The physical count of stock items located within an installation or activity for verification of the recorded stock balances (AR 780-45). [Ref. 6:p. 366]
- Goods, if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process, or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. [Ref. 14:p. 159]

LETTER CONTRACT

- A written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. [Ref. 10:p. 16.603-1]
- A written preliminary contractual instrument that authorizes the immediate commencement of activity under its terms and conditions, pending definitization of a fixed-price or cost-reimbursement pricing arrangement from the work to be down. Must specify the maximum liability of the government and be superseded by a definite contract within in a specified time. Not to be used except when a written determination is made that no other type of contract is suitable. [Ref. 9:p. 32]
- In federal government contracting, this written preliminary contractual arrangement authorizes immediate commencement of contract performance pending negotiation of a definitive contract. [Ref. 15:p. 152]

- A contractual instrument that authorizes the immediate commencement of activity under its terms and conditions, pending definitization of a fixed-price or cost reimbursement pricing arrangement for the work to be done. Must specify the maximum liability of the government and be superseded by a definite contract within in a specified time. [Ref. 16:p. 499]
- A written preliminary contractual instrument that authorizes work to begin even though a final price agreement has not been reached. Specifies the maximum liability of the government pending definitization of a fixed-price or cost reimbursement pricing arrangement for the contractor. Designed to be superseded by a definitive contract with in a specified time. [Ref. 17:p. 439]
- Also known as a Letter of Intent--a written preliminary contract that authorizes the contractor to immediately begin work; pending the publication of a definitive contract containing principal contract provisions. [Ref. 7:p. 8]
- A written preliminary contractual instrument that authorizes the immediate commencement of manufacture of supplies or performance of services, including, but not limited to, production planning and the procurement of necessary materials (NAVMAT P-4215, DAR 3-408, DAC 67-6). [Ref. 6:p. 386]
- A written preliminary contractual instrument that authorizes the immediate commencement of an activity under its terms and conditions, pending agreement on a definite fixed price or cost reimbursement pricing arrangement for the work to be down. [Ref. 8:p. 31-18]

MULTIYEAR CONTRACT

- Means contracts covering more than 1-year's but not in excess of 5-years' requirements, unless otherwise authorized by statute. Total contract quantities and annual quantities are planned for a particular level and the type of funding as displayed in a current 5-year development plan. Each program year is annually budgeted and funded and, at the time of award, funds need only to have been appropriated for the first year. The contractor is protected against loss resulting from cancellation by contract provisions which allow reimbursement of costs included in the cancellation ceiling. [Ref. 10:p. 17.101]
- Procurement contracts extending more than one year which are funded annually as appropriations permit. If it is necessary to cancel the remaining quantities in any year, the contract is paid an agreed upon portion of the nonrecurring start-up costs. [Ref. 7:p. 20]
- A method of competitive contracting for known requirements of military supplies or services in

quantities and total cost not in excess of planned requirements for more than one year, even though the total funds ultimately to be obligated by the contract are not available to the contracting officer at the time of entering into the contract. Under this method, contract quantities are budgeted for and financed in accordance with the program year for which each quantity is authorized. This procedure provides for solicitation of prices based either on award of the current one-year program quantity only, or, in the alternative, on the total multiyear quantities. [Ref. 14:p. 180]

- A method of procuring known requirements for supplies or services for more than 1 year even though the total funds to be obligated are unavailable at the time of entering into the contract. [Ref. 9:p. 36]
- A contract for the purchase of property or services for more than one, but not more than five, program years. The contract could provide that the performance under it during the second and subsequent years is contingent upon the appropriation of funds, and a cancellation payment may be made if such appropriations are not made. [Ref. 18:p. 267]
- Multiyear Procurement: A method of competitively purchasing up to 5 years' requirements in one contract, which is funded annually as appropriations permit. If necessary to cancel the remaining quantities in any year, the contractor is paid an agreed upon portion his/her unamortized nonrecurring start up costs. [Ref. 9:p. 36] [Ref. 11:p. 53]
- Multiyear Procurement: A DOD developed method of contracting on a long term basis. This arrangement allows the procurement of supplies over several years even though the total funds which are expected ultimately to be obligated pursuant to the contract terms are not available at the time of contract formation. [Ref. 15:p. 152-153]

PATENT

- (1) Readily visible or intelligible; obvious. (2) An official document conferring a right or privilege. [Ref. 4:p. 862]
- A governmental grant securing to the inventor or inventors assigned the exclusive right to produce, use and vend the article. [Ref. 7:p. 22]
- A grant made by the Register of Patents of the United States under the authority of federal legislation to an inventor, which gives the patentee the exclusive right to make, use, and sell the patented article. [Ref. 8:p. 31-21]
- Open; manifest; evident; unsealed. Used in this sense in such phrases as "patent ambiguity", "patent writ", "letters patent". [Ref. 5:p. 1013]

PROCUREMENT PACKAGE

- The information required to obtain bids or proposals. It is comprised of the technical data package describing the item or service to be procured together with all applicable administrative, legal, and fiscal provisions as are necessary for a clear and complete description of the item or service desired and the conditions governing the proposed contractual agreement between the Government and the supplier (AR 320-5). [Ref. 6:p. 545]
- The procurement package is defined as the technical information necessary to adequately describe the item intended to be procured to include the following as appropriate: (1) End Item Specification with revisions and amendments, (2) Design Drawings, (3) Supplemental Quality Assurance Provisions, (4) End item Final Inspection Requirements (AR700-101). [Ref. 6:p. 545]

REQUIREMENT

- Materials, personnel, or services needed for a specific period of time. [Ref. 7:p. 26]
- (1) The need or demand for personnel, equipment, facilities, or other resources or services by specific quantities at a specified time. (2) For use in budgeting, item requirements should be screened as to individual priority and approved in light of total available budget resources. [Ref. 9:p. 48] [Ref. 11:p. 72]
- The maximum overall need of the component for materials or services by specific periods of time or at specified times, in order to perform assigned missions, and prior to consideration of available assets. [Ref. 12:p. 483]
- The need or demand for resources expressed in specific quantities for specific time periods to accomplish a specific work program (AFLCR 400-15). [Ref. 6:p. 589]
- The need or demand for personnel, equipment, facilities, or other resources or services by specific quantities, for specific periods of time or at a specified times (DOD 5000.8). [Ref. 6:p. 589]

UNSOLICITED PROPOSAL

- A written proposal that is submitted to an agency on the submitter's initiative for the purpose of obtaining a contract with the Government, and which is not in response to a formal or informal request. [Ref. 11:p. 88]
- Means a written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs) [Ref. 10:p. 15.101]
- Proposals submitted not in response to solicitation but rather an awarding body at the initiative of a potential contractor who suggests an area that he believes will be

of interest to the entity. They are a primary method by which the Government obtains creative ideas for satisfying basic and applied research programs. [Ref. 14:p. 283]

- A research or development proposal which is made to the Government by a prospective contractor without prior formal or informal solicitation from a purchasing activity (DAC 76-9) [Ref. 6:p. 727]
- A voluntary offer, plan, or article based on a novel design concept, idea, suggestion, or improvement. It includes inventions submitted for evaluation in such form as to constitute a proposal for a specific project or contractual undertaking. Inclusion of the subject matter in a Government publication such as Air Force Technical Objective Documents does not constitute an act or solicitation by the Government. Proposals submitted on this basis are considered unsolicited (AFSCR 80-8). [Ref. 6:p. 727]
- Voluntary proposals from a non-Federal source for products or services to meet unexpressed or unassumed government needs. They may be offered in response to program announcement of opportunities. When evaluated, they meet an identified but valid need and result in noncompetitive awards. [Ref. 9:p. 56]

**APPENDIX B: COVER LETTER, QUESTIONNAIRES,
AND FOLLOW UP LETTER**

This appendix contains the cover letter, five separate questionnaires, and the follow up letter sent to 500 CPCM/CACM members. The questionnaires were sent out in five separate mailings of one hundred each.

A. COVER LETTER

CONTRACTING TERMINOLOGY QUESTIONNAIRE

The purpose of this questionnaire is to obtain feedback from contracting professionals in an effort to refine the definitions listed below.

Graduate students at the Naval Postgraduate School, Monterey, California, and the Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio, are conducting an ongoing research effort to establish working definitions for commonly used acquisition words and phrases. When the project is completed, the definitions will be published in a professional dictionary of acquisition and contracting terminology. The dictionary has two purposes. First, to be used as an educational tool for those unfamiliar with the acquisition process. Second, to act as a reference document for those working in the field.

The researcher has provided an initial definition derived from current literature. The definitions were synthesized into a narrative that reflects the meanings conveyed in the published material.

Please review each of the five definitions. Indicate whether or not you feel it is a viable working definition. Please feel free to make changes you deem necessary. This may be done in any way that will be legible to the researcher, such as lining out words, or rewriting the entire definition. Also, please include a short explanation for the change in the comments section; this will help the researcher to understand your reasoning when reviewing the proposed definition. Finally, any terms that can be related as synonyms or antonyms should be annotated in the spaces provided.

Your participation in this research effort is greatly appreciated. If you need any additional details, LT Mike Robinson can be contacted by telephone at (408) 373-5230, or by writing to:

LT Mike Robinson, SC, USN
SMC 2339
Naval Postgraduate School
Monterey, CA 93943

B. QUESTIONNAIRE (A)

AMENDMENT

A revision or change to improve or correct a document; often used to correct an Invitation For Bid (IFB). An amendment is distinguished from "modification" which is generally used in procurement to change an existing contract.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

ARBITRARY

- (1) Depending on individual discretion or not fixed by law.
- (2) Coming about seemingly by chance or as a capricious and unreasonable act of will.
- (3) A determination made willfully by whim without adequate regard for the facts or circumstances. Often used as in an "arbitrary and capricious manner."

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

ASSIGNMENT

The legal transfer, to another party, of some property right (as in the case of intangible property) or the actual transfer of title and/or possession (as in the case of tangible property).

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

BAILMENT

A delivery of Government property to a contractor for a specific purpose directly related to a contract. The material is to be returned to the Government or accounted for when the special purpose is accomplished. Bailment does not include: (a) sale, (b) donation, (c) lease, (d) the furnishing of property to a contractor under a facilities contract or (e) the furnishing of Government furnished property for consumption or in such a way that it would lose its identity when incorporated into an end product.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

BIDDERS CONFERENCE

A colloquial expression that describes a method of disseminating information to all potential respondents to a solicitation, be it an Invitation for Bid (IFB) or a Request for Proposal (RFP). The contracting officer arranges the conference during the solicitation period to help the respondents fully understand the Government requirements and to give them an opportunity to ask questions about the solicitation.

SYNONYM: PRE-BID CONFERENCE, PRE-PROPOSAL CONFERENCE.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

C. QUESTIONNAIRE (B)

BOILERPLATE

(1) A standardized prearranged format. Applies to anything which is not subject to frequent changes.

(2) Used most often in Government contracting to describe the general provisions or standard clauses incorporated into the solicitation and/or contract. It is usually pre-printed and often incorporated by reference.

SYNONYM: GENERAL PROVISIONS.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

CONFLICT OF INTEREST

Personal Conflict of Interest: (1) A conflict between the private interests and the official responsibilities of a person in a position of trust (as a Government or corporate official).

(2) The actual or potential conflict in which a Government employee (or his immediate family) may gain from (or hold interest in) a company doing business with the Government.

Organizational Conflict of Interest: This situation exists when the nature of work to be performed under a proposed (Government) contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contracted work.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

CONSIDERATION

- (1) Something of value given for a promise to make that promise binding.
- (2) The inducement to a contract. The reason a contracting party enters into a contract. Often used as a recompense when an existing contract is changed.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

CONTRACT MODIFICATION

Any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity or other contract provisions of an existing contract, whether accomplished by unilateral action (change order) in accordance with a contract provision or by mutual action (supplemental agreement) of the parties to a contract. Compare this with an "amendment" which is usually used to modify a solicitation.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

DEFAULT

- (1) Failure to do something required by law.
- (2) To fail to fulfill a contract, agreement, or duty.
- (3) In Government contracting most often refers to the contractor's failure to make adequate progress, failure to deliver on time, or failure to fulfill a material provision of the contract. In these circumstances the Government accrues the right to terminate.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

D. QUESTIONNAIRE (C)

DELINQUENCY

- (1) Failure, omission, violation of law or duty.
(2) State or condition of one who has failed to perform his duty or obligation.
(3) Includes, for example, actual failure by the contractor-that is his failure, regardless of reason to meet the contract delivery or performance schedule; and potential failure by the contractor-that is, his failure, regardless of reason, to maintain such progress in contract performance as is required to meet his contract delivery or performance schedule.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

ECONOMIC ORDER QUANTITY (EOQ)

The most economical quantity of parts to order at one time to support a defined production or consumption rate considering the applicable procurement and inventory costs.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

ESCALATION

(1) A term traditionally used to indicate an upward or downward movement of price. "Economic price adjustment" is the contemporary term used to express the sense of escalation.

(2) In Government contracting refers to an amount or percent by which a contract price may be adjusted if contingencies occur, such as changes in the vendor's raw materials costs or labor costs.

SYNONYM: ECONOMIC PRICE ADJUSTMENT.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

ETHICS

(1) The study of human conduct which deals with right and wrong. (2) The philosophy of dealing with moral conduct, duty, and judgement.

(3) Conforming to professional standards of conduct.

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

FIFO COST METHOD

An inventory flow assumption where ending inventory cost is determined from most recent purchases, and costs of goods sold is determined from oldest purchases including beginning inventory. ANTONYM: LIFO COST METHOD

Is this an acceptable working definition? Yes No

If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

E. QUESTIONNAIRE (D)

FLOW DOWN OF CONTRACT REQUIREMENTS

Contract provisions that make subcontractors subject to the same contractual obligations as prime contractors or higher tier subcontractors. In this connection it should be noted that subcontractors are sometimes required to indemnify a prime contractor in areas where the prime contractor has no similar obligation to the procuring body.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

GENERAL PROVISIONS

The mandatory (by law or regulation) clauses for all DOD contracts for the type of procurement involved.

SYNONYM: BOILERPLATE

ANTONYM: SPECIAL PROVISIONS

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

IMPLIED CONTRACT

An implied contract is one not created or evidenced by the explicit agreement of the parties. It is inferred by the law, as a matter of reason and justice from the acts or conduct of the parties involved. The surrounding circumstances imply that a contract existed between them by tacit understanding. Implied contracts are not generally recognized as binding in Government contracting.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

INVENTORY

- (1) The amount of property on hand at any given time.
- (2) An itemized list of property amounts indicated as on hand at a particular time.
- (3) Goods held for sale or lease or furnished under contracts of service; also raw materials, work in process or materials used or consumed in a business.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

LETTER CONTRACT

A written preliminary contractual instrument that authorizes the immediate commencement of activity under its terms and conditions, pending definitization of a fixed price or a cost reimbursement pricing arrangement for the work to be done. Must specify the maximum liability of the buyer and be superseded by a definite contract within a specified time. In Federal Government contracting it is generally not used except when a written determination is made that no other type of contract is suitable.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

F. QUESTIONNAIRE (E)

MULTIYEAR CONTRACT

A contract covering more than one year's but not more than five year's worth of requirements, unless otherwise authorized by statute. Total contract quantities and annual quantities are planned for a particular level and type of funding as displayed in the current six year development plan. Each program year is annually budgeted and funded, and at the time of award funds only need to have been appropriated for the first year. Failure to fund the next annual requirement cancels the contract. The contractor is protected against loss resulting from cancellation by contract provisions which allow reimbursement of costs included in the cancellation ceiling.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

PATENT

(1) Open; manifest, evident; unsealed. Used in this sense in such phrases as "patent ambiguity," "patent writ", "letters patent."

(2) A grant made by the Register of Patents of the United States under the authority of federal legislation to an inventor, which gives the patentee the exclusive right to make, use, and sell the patented article for a specified number of years.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

PROCUREMENT PACKAGE

(1) The information required to obtain bids or proposals. It is comprised of the technical data package describing the item or service to be procured together with all applicable administrative, legal, and fiscal provisions that are necessary for a clear and complete description of the item or services desired and the conditions governing the proposed contractual agreement between the Government and the supplier.
(2) The technical information necessary to adequately describe the item or service to be procured.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

REQUIREMENT

The need or demand for personnel, equipment, facilities, and other resources or services. Exact quantities and duration should be specified as applicable.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

UNSOLICITED PROPOSAL

A written proposal that is submitted to a potential buyer on the submitter's initiative for the purpose of obtaining a contract with the buyer. It is not in response to a formal solicitation.

Is this an acceptable working definition? Yes No
If no, please explain: _____

Revised definition/comments: _____

SYNONYMS: _____

ANTONYMS: _____

G. FOLLOW UP LETTER

About a week ago, you should have received a questionnaire regarding research to derive baseline definitions for commonly used acquisition words or phrases. If you have not received the questionnaire, please call LT Mike Robinson at (408) 373-5230, and a copy will be faxed to you immediately.

If you have already completed and returned the questionnaire, thank you for your cooperation. I appreciate your help in this effort.

If you have not returned the questionnaire, I urge you to do so by 27 August 1990 or as soon as possible thereafter. Your perspective is very important to the research. Your responses will be used, in part, to create a professional dictionary of contracting terminology.

If you need any additional details, feel free to contact me by telephone at (408) 373-5230, or by writing to:

LT Mike Robinson, SC, USN
SMC 2339
Naval Postgraduate School
Monterey, CA 93943

**APPENDIX C: PROPOSED DEFINITIONS BASED UPON THE
CONSENSUS PROCEDURE**

This appendix contains the definitions of all the researched terms developed through the consensus procedure.

AMENDMENT

(1) A revision or change to correct, clarify, or add to an existing document.

(2) In Government contracting it is an instrument used to correct, clarify, or add to a solicitation document. Contrast this with a "modification" which is used to change an existing contract.

- **Synonyms:** Revision, alteration, correction.
- **Antonyms:** None.

ARBITRARY

(1) Depending on individual discretion, not fixed by law or regulation.

(2) Coming about seemingly by chance or as a capricious and unreasonable act of will.

(3) A determination made willfully by whim without adequate regard for the facts or circumstances. Often used as in an "arbitrary and capricious manner."

- **Synonyms:** Subjective, autocratic, despotic, unilateral.
- **Antonyms:** Objective, bilateral.

ASSIGNMENT

(1) The legal transfer, to another party, of some intangible property right or the actual transfer of title and/or possession of tangible property.

(2) The legal transfer of a claim, right, or obligation from one party to another.

- **Synonyms:** None.
- **Antonyms:** None

BAILMENT

A delivery of property from the owner to another party to be used in accomplishing a specific purpose. The property is to be returned to the owner or properly accounted for when the specific purpose is accomplished. Bailment does not include the sale, donation, lease, furnishing of property to a contractor under a facilities contract, or the furnishing of Government Furnished Property (GFP) where it would be consumed or otherwise lose its identity in the production process.

- **Synonyms:** None.
- **Antonyms:** None

BIDDERS CONFERENCE

A generic expression that describes a method of disseminating information to all potential respondents to a solicitation, be it an Invitation for Bid (IFB) or a Request for Proposal (RFP). The contracting officer arranges the conference during the solicitation period to help the potential respondents fully understand the buyer's requirements and to give them an opportunity to ask questions about the solicitation.

- **Synonyms:** Pre-Bid Conference, Pre-Proposal Conference.
- **Antonyms:** None.

BOILERPLATE

(1) A standardized prearranged format. Applies to language which is not subject to frequent change.

(2) Used most often in Government contracting to describe the general provisions or standard clauses incorporated into the solicitation and/or contract. It is usually pre-printed and often incorporated by reference.

- **Synonyms:** General provisions, standard provisions and clauses.
- **Antonyms:** Special provisions, special contract requirements.

CONFLICT OF INTEREST

Personal Conflict of Interest: (1) An actual or potential conflict between the private interests and the official responsibilities of a person in a position of trust (as a Government or corporate official).

(2) The actual or potential conflict in which a Government employee (or immediate family) may gain from (or hold interest in) a company doing business with the Government.

Organizational Conflict of Interest: This situation exists when the nature of work to be performed under a proposed (Government) contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contracted work.

- **Synonyms:** None.
- **Antonyms:** None.

CONSIDERATION

(1) Something of value given in exchange for a promise to make that promise binding. (2) The inducement to a contract. Often the reason a contracting party enters into a contract.

(3) In a contractual relationship, something of value given to the second party when the first party does not fully meet its contractual obligation.

- **Synonyms:** Compensation, earned benefit.
- **Antonyms:** None.

CONTRACT MODIFICATION

Any authorized written alteration in the provisions of an existing contract, whether accomplished by unilateral action (change order) in accordance with a contract provision or by mutual action (supplemental agreement) of the parties to a contract. Compare this with an "amendment" which is usually used to alter a solicitation.

- **Synonyms:** Change order, supplemental agreement.
- **Antonyms:** Constructive change.

DEFAULT

(1) Failure to satisfy the terms and conditions of a contract, agreement, or duty.

(2) In Government contracting most often refers to the contractor's failure to make required progress, failure to deliver or perform on time, or failure to fulfill a material provision of the contract. In these circumstances the Government may exercise its right to terminate for default.

- **Synonyms:** Breach, non-compliance, non-conformance.
- **Antonyms:** Compliance, conformance.

DELINQUENCY

(1) Failure, omission, or violation of contractual obligation or duty.

(2) The actual failure by the contractor to meet the contract delivery or performance schedule, or the potential failure to do so by failing to maintain required progress in contract performance as required by the contract delivery or performance schedule.

- **Synonyms:** Overdue, tardy, late.
- **Antonyms:** Early, accelerated, timely.

ECONOMIC ORDER QUANTITY (EOQ)

- (1) The most economical quantity of items to order at one time to support a defined production or consumption rate.
- (2) A formula-derived order quantity that balances carrying costs (which favors small frequent orders) against set-up or procurement costs (which favors large single orders).

- **Synonyms:** Minimum order quantity, Just-in-Time.
- **Antonyms:** None.

ESCALATION

- (1) A term traditionally used to indicate an upward or (more rarely) a downward movement of price. "Economic Price Adjustment" is the contemporary term used to express the application of escalation by specified procedures.
- (2) In Government contracting refers to an amount or percent by which a contract price may be adjusted if pre-defined contingencies occur, such as changes in the vendor's raw material costs or labor costs. The amount of the "escalation" is usually tied to some predetermined price index.

- **Synonyms:** Economic Price Adjustment.
- **Antonyms:** None.

ETHICS

Conforming to personal and professional standards of conduct and business practices within a specific profession. Individuals in Government and industry who are associated with Government contracting are subject to special statutes and regulations which govern their conduct.

- **Synonyms:** Morality, standards of conduct.
- **Antonyms:** Unethical, immorality.

FIFO (First-In First-Out) COST METHOD

- (1) A procedure where ending inventory cost is determined from most recent purchases, and costs of goods sold is determined from oldest purchases including beginning inventory.
- (2) An inventory pricing assumption where items are physically used in the same order they were purchased.

- **Synonyms:** None.
- **Antonyms:** LIFO (Last-In First-Out) Cost Method.

FLOWDOWN OF CONTRACT REQUIREMENTS

Contract provisions that subject subcontractors to the same contractual obligations as prime contractors or higher tier subcontractors. Subcontractors are sometimes required to compensate or protect the prime contractor from damage in areas where the prime contractor has no similar obligation to the procuring activity.

- **Synonyms:** Mandatory flow down clauses.
- **Antonyms:** None.

GENERAL PROVISIONS

(1) A collection of contract clauses that are not specific to a given procurement, but are part of common contract language.
(2) In Government contracting, contract clauses that are mandated by law or regulation or required by local authority.

- **Synonym:** Boilerplate.
- **Antonym:** Special Provisions.

IMPLIED CONTRACT

A bilateral understanding evidenced by the implicit agreement of the parties. Contract formation is inferred by law, as a matter of reason and justice from the acts or conduct of the parties involved. The surrounding circumstances imply that a contract existed between the affected parties.

- **Synonyms:** Verbal agreement, verbal contract, implied agreement.
- **Antonyms:** Expressed contract.

INVENTORY

(1) The amount of property or material on hand at any given time.
(2) An itemized list of property or material indicated as on hand at a particular time.
(3) Goods held for sale or lease. Also, raw materials, work in process, or materials used or consumed in a business.

- **Synonyms:** Stock.
- **Antonyms:** None.

LETTER CONTRACT

A written preliminary contractual instrument that authorizes the immediate commencement of activity under its terms and conditions, pending negotiation and definitization of contractual details including the pricing arrangement for the work to be done. It must specify the maximum financial liability of the buyer and be superseded by a definitive contract within a specified time. In Government contracting it is generally not used except when a written determination is made by the head of the contracting activity that no other type of contract is suitable.

- **Synonyms:** Letter agreement, authority to proceed.
- **Antonyms:** Definitized contract.

MULTIYEAR CONTRACT

A contract for a term potentially greater than one year but not more than five years, unless otherwise authorized by statute. Annual requirements and expenditures and total requirements and expenditures over the basic year of the contract and subsequent years are planned for a particular level and type of funding, as set forth in the current six year development plan. Each program year is budgeted and funded annually. At the time of award, funds need have been appropriated only for the first year. Failure to fund any successive year cancels the contract. The contractor is protected against loss resulting from cancellation by contract provisions which allow reimbursement of costs included in the cancellation ceiling.

- **Synonyms:** None.
- **Antonyms:** Annual Contract.

PATENT

(1) Open; manifest; obvious; evident. Used in this sense as a "patent defect" which is a defect discovered readily by an ordinary examination or test.

(2) A Government grant of exclusive rights to an inventor that prohibits others from making, using, or selling the patented article for a specified number of years. Patents are not necessarily recognized outside the United States.

- **Synonyms:** Apparent, obvious, evident.
- **Antonyms:** Latent, hidden.

PROCUREMENT PACKAGE

The information prepared by the Government to solicit bids or proposals. It is comprised of the technical data package necessary to adequately describe the item or service to be procured together with all applicable administrative, legal, and fiscal information necessary for a clear and complete description of the item or service desired and the conditions governing the proposed contractual agreement between the Government and the supplier.

- **Synonyms:** None.
- **Antonyms:** None.

REQUIREMENT

The need or demand for personnel, equipment, facilities, and other supplies or services. Exact quantities and delivery or performance schedule should be specified as applicable. This forms the basis of a solicitation as communicated to contracting personnel through the procurement package.

- **Synonyms:** None.
- **Antonyms:** None.

UNSOLICITED PROPOSAL

A written proposal that is submitted to a potential buyer on the submitter's initiative for the purpose of obtaining a contract with the buyer. It is not in response to a formal solicitation.

- **Synonyms:** None.
- **Antonyms:** Request For Proposal, solicited proposal.